No. ________________

Supreme Court, U.S.
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In The
Supreme Court of the United States

Myra R. Edwards

Petitioner

v.

Department of the Air Force (AFBCMR), "et al".

Respondent

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Fourth Circuit,

Richmond, VA

PETITION FOR WRIT OF CERTIORARI

Myra R. Edwards
Pro Se of Record
1120 Windemere Court
Fort Washington, MD 20744
703-325-4951

Pro Se – Petitioner

QUESTIONS FOR REVIEW

Ms. Edwards is before the Supreme Court **questioning whether or not justice is served with the issue on appeal being**: U.S. District Court of Maryland's INTERPRETATION OF LAW used to affirm Plaintiff should be denied correction of the 1986 PA Chest X-ray record and Plaintiff should be denied all claims for punitive damages. The civil record, shows Ms. Edwards filed MOTION on the 5th day of November 1996, App. 467 by stating "Plaintiff is appealing the U.S. District Court's Order to close the entitled case prior to AFBCMR being required to give full faith and credit for medical facts found on Georgetown University Hospital's 1990 Radiology Report"… Plaintiff affirm she came before the Court to request the release of records used to affirm correction is not warranted with issue being the longevity of the nodular densities believed to represent nipple shadows for all medical findings 1979 – 1986 without finding of fact as to whether or not the longevity of these shadows (once the 1986 X-ray record is corrected) represents medical facts for the development of cancer that lead to death. The civil record affirms Plaintiff is denied correction filed within statute and filed within the time frame for destruction (AFMAN 37-139, Table 44-3, Rules 8-10). DKC-95-3115 affirms Plaintiff is denied correction because the application was not timely filed. DKC-97-1533 affirms even though the Board elected to deny correction based on timeliness, they found no injustice data exists and that the **Lateral view taken on the same date as the 1986 PA Chest view did not reveal a finding for nodular densities/nipple shadows.** The civil record barred by U.S. District Court of Maryland for final determination of the injustice data shows Plaintiff filed the correction application 28 October 1992 with finding of fact for destruction of the 1986 Lateral X-ray film (on record in civil claim 98-930C affirming the lateral film was destroyed in January 1994 without review) or before Defendants affirmed in error DKC-95-3115 and DKC-97-1533 that Plaintiff did not file the correction application in a timely manner. **Ms. Edwards is questioning justice** from the standpoint that she is being denied the right to establish material facts under service entitlements for the longevity of nipple shadows. The civil record shows no finding of fact to establish a relationship for the onset of cancer that lead to death, with rating for entitlements still (denied) at 100% disability. The civil record affirms Ms. Edwards requested the release of records Defendants used to affirm a factual finding for the 1994 correction denial in civil claim DKC-95-3115. This record of proceedings affirm Plaintiff is denied the release of records the "Board" used to affirm no injustice data exists. Ms. Edwards again requested the release of records for the 1986 lateral X-ray film under MOTION for Concurrent Jurisdiction before U.S. District Court of Maryland and U.S. Court of Federal Claim. See Ms. Edwards Pleadings before U.S. District Court of Maryland, App. 467, App. 167, App. 202 and App. 287 with finding of fact for destruction of the 1986 lateral X-ray film App. 331. Ms. Edwards correction claim affirms U.S. District Court of Maryland REMANDED DKC-95-3115 for further review without finding of fact for destruction of the 1986 lateral X-ray film used to affirm in civil claim DKC-97-1533 App. 5, "**We do not find it unusual that Malcolm Grow omitted a finding for nodular densities – 1986 PA Chest X-ray report since the Lateral view taken on the same date did not reveal a finding for nodular densities/nipple shadows",** Summary Judgment Affirmed. The civil record shows Ms. Edwards sent notice to Defendants for filing claim under concurrent Jurisdiction, 15 Sep 1999, App. 216. The civil record shows Ms. Edwards advised the Court 24 December 1998 that a claim under Concurrent Jurisdiction would be filed. The record of proceedings shows Plaintiff's Motion for Concurrent Jurisdiction is estopped 29 January 1999, by U.S. District Court of Maryland with this Court affirming by ORDER 12 November 1999 (App. 346) Plaintiff has moved to reopen this case based on "Allegedly" newly discovered evidence (finding of fact for destruction of the 1986 lateral X-ray film without review) not available for use in her two prior cases, DKC-95-3115 and DKC-97-1533.

Ms. Edwards is **questioning justice** with finding of fact that shows Defendants misused its power under Federal Law to affirm a medical finding for the 1986 Lateral X-ray film (Without ever having reviewed this film before destruction in 1994). Ms. Edwards is **questioning justice** with finding of fact that shows Plaintiff is estopped by Court ORDER from using records before U.S. Court of Federal Claims to affirm Defendants' arbitrarily or capriciously denied correction in violation of Judge Ellis Ruling in McFarlane v. Secretary of the Air Force. Facts for destruction of the 1986 X-ray film shows Ms. Edwards' is being wrongfully denied correction and wrongfully denied compensation with finding of fact affirming the 1986 X-ray film was destroyed before Defendants affirmed (Record of Proceedings) that Ms. Edwards did not file the correction claim in a timely manner.

The civil record shows on 29 January 1999 U. S. District Court of Maryland DISMISSED Ms. Edwards MOTION for Concurrent Jurisdiction as barred under the doctrine of Res Judicata. U.S. District Court of Maryland affirms, while difficult to decipher, it appears that her answer filed under Just Cause, App. 202 is not entirely responsive to this Court's Claim and issue preclusion concerns. U.S. District Court of Maryland affirms Ms. Edwards continues to argue that the Government erred when wrongfully denying correction of a report entered in her husband's medical record. The finding of fact in Civil claim 98-930C affirms Defendants wrongful actions, but the record before U.S. District Court of Maryland upheld by the Court of Appeals affirms, the Pro Se Plaintiff is barred by ORDER of the Court from introducing evidence of record in civil claim 98-930C to affirm Defendants wrongful acts under Federal Law. U.S. District Court of Maryland ORDER issued 29 January 1999, bars evidence for destruction of the 1986 X-ray film and shows there is no finding in civil claim DKC-97-1533 to affirm based on Judge Ellis RULING in McFarlane v. Secretary of the Air Force that Ms. Edwards is receiving a reduced annuity (**with no correction claim rated at 100% disability**, App. 449). Defendants affirm, **"We do not find it unusual that Malcolm Grow omitted a finding for nodular densities – 1986 PA Chest X-ray report since the Lateral view taken on the same date did not reveal a finding for nodular densities/nipple shadows".** The civil claim before U.S. District Court of Maryland (DKC-95-3115 and DKC-97-1533) shows no evidence is released to affirm Malcolm Grow and AFBCMR withheld Agency records when affirming the death certificate and Application for correction of the omission are the only two records responsive to the issues for correction filed under Title 10 Section 1552 (App. 68). The correction claim denial shows Ms. Edwards affirm Major (Dr.) Whigham omitted a radiographic finding for the 1986 PA Chest X-ray film record with record of proceedings **affirming Defendants did not arbitrarily or capriciously deny correction, thus, correction of the omission is denied and all claims for compensation are denied.** The record of proceeding before U.S. District Court of Maryland affirms Defendants Federal violations are barred by Court Order and Upheld by U.S. Court of Appeals for the Fourth Circuit. Ms. Edwards is before the Supreme Court **Questioning**: The actions of U.S. District Court who affirm Plaintiff was given a fair and equitable forum to present the correction claim. The record of proceedings affirms this Court Remanded the civil claim DKC-95-3115 and did not COMPEL discovery of records for the remanded civil claim DKC-95-3115 and DKC-97-1533. DKC-97-1533 affirms Plaintiff Continuous Motion App.152 that shows this Court has not ruled on Defendants Violations under Federal Law; instead this Court interpreted law to affirm Defendants did not arbitrarily or capriciously deny correction in 1994. See the Courts Finding in DKC-95-3115, App. 10 (error based on Judge Ellis Ruling in McFarlane v. Secretary of the Air Force). The civil claim affirms U.S. District Court of Maryland Ruled Summary Judgment is appropriate with **finding of fact showing Defendants admit, Major Whigham chose to omit a medical fact for the omission of 2 1cm nodular densities** – Defendants Memorandum of Law… Motion to Dismiss… (See App. 142). The civil record affirms Plaintiff Continuous Motion for Denial of Defendant's MOTION for Summary Judgment App. 152 with record of proceedings affirming "No Penalty was issued to Malcolm Grow and AFBCMR for violating Statute (error based on Judge Ellis Ruling in McFarlane v. Secretary of the Air Force). The civil record affirms Plaintiff is denied the Release of Unbiased Records for review of the 1986 Lateral X-ray film with finding of fact affirming the Court Remanded the civil claim for further review.

U.S. Court of Federal Claims heard civil complaint 98-930C, 18 February 1999. With this hearing affirming the following facts: Malcolm Grow and AFBCMR destroyed the

1986 PA Chest and Lateral X-ray film in January 1994 or 9 months before Ms. Edwards received notice that she did not file the correction claim in a timely manner. The civil record shows Ms. Edwards filed MOTION in civil claim DKC-98-4190 before U. S. District Court of Maryland for entrance back into the Court after discovering "material facts/record of evidence for destruction of the 1986 Lateral X-ray film" used to affirm Summary Judgment and used to affirm no injustice data exists with finding of error continuing to be Major (Dr.) Whigham 1986 PA Chest X-ray omission (App. 347). The civil record affirms U.S. District Court of Maryland denied Ms. Edwards MOTION to reopen DKC-98-4190 by affirming: Plaintiff has moved to reopen this case based on allegedly newly discovered evidence not available for use in her two prior cases 95-3115 and 97-1533. U.S. District Court of Maryland affirm Ms. Edwards civil claim for correction of the 1986 PA Chest X-ray record under civil claim DKC-98-4190 was dismissed on grounds of Res Judicata and that this dismissal was affirmed on appeal (App. 198 and App. 283). **Ms Edwards is Questioning:** Justice with finding being correction is denied even though filed within statute; correction is denied with Defendants having violated Judge Ellis Order; and correction is denied and barred with Plaintiff discovering Defendants destroyed the 1986 Lateral X-ray film without review for final determination that Major (Dr.) Whigham omission does not create an injustice for finding of fact for the longevity of nodular densities believed to be nipple shadows (1979 – 1986). The 1986 record has never been corrected so a void is created which nullifies the findings of doctors who never knew medical facts are in omission for the 1986 PA Chest X-ray record, based on Major (Dr.) Whigham choosing to omit a radiographic finding for 2 1cm nodular densities in year of occurrence). The record of proceedings not adjudicated shows "No finding of facts" for review of the 1986 Lateral X-ray film with Summary Judgment Affirmed. See 97-1533, 98-4190, 98-930C, AFLSA/JACL letter dated 24 Feb1999 and the FOIA letter on page App. 425. The record affirms U.S. District Court of Maryland denied Ms. Edwards MOTION for release of record to U.S. Court of Federal Claims filed 5 December 2001 App. 427. The record also shows U. S. District Court denied Ms. Edwards MOTION (Consolidated Request) to set aside the previous decision granting Summary Judgment in favor of Defendants.

The record before U.S. District Court of Maryland shows the Court is barring material evidence now in discovery (civil claim 98-930C) that should be used to affirm: Malcolm Grow or the "Board' did not review the 1986 Lateral X-ray film when affirming Summary Judgment. With finding of fact in civil claim 98-930C also showing all of the 1986 X-ray film was destroyed in January 1994, or before record of proceedings before U.S. District Court of Maryland (REMANDED civil claim) that shows no findings of fact for destruction of the 1986 X-ray film in January 1994 or long before Ms. Edwards brought claim under FOIA for release of records (Denied DKC-95-3115). U.S. District Court of Maryland denied Entrance Back into the Court see Courts Order, 8 March 2002, App. 446. All Appeals with finding by U.S. District Court of Maryland have been upheld by U. S. Court of Appeals for the Fourth Circuit. See U.S. Court of Appeal final denial issued 8 July 2002 denying Ms. Edwards entrance back into the Court with finding of fact affirming: It has been more than 2 years since claim was filed in U.S. Court of Federal Claims, thus this case is now closed. Ms. Edwards is **Questioning**: Justice from the standpoint of how it is served, with finding of fact affirming the records used to affirm Summary Judgment contain fraudulent data, and Court records affirm, Plaintiff is barred from presenting evidence to affirm Defendants fraudulently, arbitrarily and/or maliciously affirmed a finding for review of the 1986 Lateral X-ray film. Ms. Edwards prays the Supreme Court will rule, on the Judicial errors of record, used to affirm Plaintiff should be denied correction of Major (Dr.) Whigham 1986 radiology record omission. Ms. Edwards is seeking compensation in the amount of 5.5 M dollars as the final punitive damage with finding of fact affirming Defendants willfully misused its power to affirm Plaintiff should be denied correction of the medical record that defendants knew affirmed an omission. The civil record affirms Defendants knew Plaintiff filed claim for Veteran's Entitlements protected by Federal Law; however the records from the Veterans Administration affirms **all claims for entitlement rating at 100% disability is denied**.

NAMES OF PARTIES BEFORE

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION
6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
CIVIL CASE: DKC-95-3115; DKC-97-1533 & DKC-98-4190

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, U.S. COURTHOUSE ANNEX 5TH FLOOR, 1100 EAST MAIN STREET
RICHMOND, VA 23219
CIVIL CLAIMS: 96-2706; 99-1342, 99-2610, 02-1102, 02-1103 & 02-1104

Plaintiff:
Myra R. Edwards
1120 Windemere Court
Fort Washington, MD 20744
Daytime # 703-325-4951

Defendants:
Department of the Air Force
AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, MD 20762-7002

Department of the Air Force
Legal Office
Malcolm Grow USAF Medical Center
Andrews AFB, MD 20331-5300

Lynne A, Battaglia
United States Attorney
Attn: Larry Adams
Assistant United States Attorney
604 United States Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

Honorable John Ashcroft
Attorney General
Department Of Justice
10th and Constitution Avenues, NW
Washington, DC 20530

DISCLOSURE STATEMENT

Ms. Edwards affirm she is not a party of a corporation or parent company or publicly held company holding 10% or more of the corporation's stock.

Signed: Myra L. Edwards

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Cited Authorities

1. Title 10, U.S.C., Section 1552
2. AF Pamphlet 31-5 – Allows any person with Air Force military records, or his/her heirs to apply to the AFBCMR Title 10, U.S.C., Section 1552 under the law governing correction of military records. This statute authorizes the Secretary of the Air Force (SAF) to correct any military record when necessary to correct an error or injustice. The purpose of this statute was to relieve the Congress from consideration of private bills to correct errors or injustice in military records. The statute requires SAF to act through a board of Air Force civilians in considering applications for corrections of military records. AFR 31-3 implements the statute within the Air Force.
3. Title 28 Part VI Chapter 171 Section 2679 with violation being under the Constitution of the United States, for violation of statute of the United States under which punitive damages is authorized.
4. Judge Ellis RULING in McFarlane v. Secretary of the Air Force. The records before U.S. District Court of Maryland and U.S. Court of Federal Claims, affirmed by FOIA, shows Malcolm Grow and AFBCMR wrongfully denied correction of Major (Dr.) Whigham 1986 medical records omission in 1994 when alleging Ms. Edwards with Claim before Department of Veterans Affairs (1988-1995) did not file the correction claim in a timely manner. The finding of for the 1986 correction shows the late Hartwell E. Edwards medical records before Department of Veterans Affairs remain uncorrected and thus affirms the injustice data against Ms. Edwards (reduced annuity unity, less than 100%. See finding of fact in civil claim 98-930C to affirm the 1986 X-ray film and all records for the film was destroyed in January 1994 without defendants having reviewed the 1986 Lateral X-ray film used to affirm Summary Judgment in civil claim DKC-97-1533.
5. Defendants' Record of Proceedings for review of WHMC/PSRD findings showing the 1986 X-ray film was not released to affirm a medical fact for review of the Lateral film. Defendants Record of Proceedings

6. (WHMC/PSRD report) affirms no resolution for the discrepancy in interpretation of the 1986 X-ray film with finding of fact in civil claim 98-930C affirming the 1986 PA Chest and Lateral X-ray film was destroyed without review before Defendants released Record of Proceedings 11 October 1994.
7. Department of Veterans Affairs rating denial that affirms, as of 15 June 1994 the medical omission remains uncorrected and reduced entitlements was awarded in 1995 under Agent Orange.
8. DKC-95-3115 and DKC-97-1533 affirms the late Hartwell E. Edwards medical records were released to Department of Veterans Affairs (records in error used in vain to prove a pre-existing condition that may have lead to the development of cancer.)
9. Title 28 Part IV Chapter 85 Section 1346. The record of proceedings DKC-97-1533 affirms Malcolm Grow and AFBCMR alleged a reading for the 1986 Lateral X-ray film with RULING by U.S. District Court of Maryland affirming Summary Judgment.
10. Transcripts and letter from AFLSA/JACL in civil claim 98-930C and records under FOIA from 11 CS/SCS dated 10 August 2000 affirming Malcolm Grow and AFBCMR alleged facts for the 1986 Lateral X-ray film while knowing the 1986 Lateral X-ray film had been destroyed in 1994 without review. This record of proceedings affirms error for AFBCMR nullifying material facts that continue to affirm the omission (1986 PA Chest X-ray film with finding for 2 1cm nodular densities).
11. Summary Judgment is inappropriate even if merely the inferences to be drawn from the facts in dispute, United States ex rel. Milan v. Regents of University of California, 912 F. Supp. 868, 874 (D. Md. 1995).
12. Bad Faith Unjustified Proceedings Rule 604b. (Civil Claim DKC-95-3115 affirms U.S. District Court of Maryland Remanded the civil claim back to AFBCMR without finding of fact for destruction of the 1986 Lateral X-ray film. However civil claim 98-930C barred under the Courts Order of Res Judicata

(29 January 1999) affirms facts for destruction of the 1986 Lateral X-ray film used to affirm Summary Judgment (DKC-97-1533).

13. Rule 2-534 MOTION TO ALTER OR AMEND A JUDGMENT – COURT DECISION. In an action decided by the Court, on motion of any party filed within 10 days after entry of judgment: The court may open the judgment to receive additional evidence. Or the Court may amend its findings or reasons and may enter new findings or new reasons; or amend the judgment or enter a new judgment. DKC-98-4190, pages App. 283-285 affirms Ms. Edwards is denied Motion to Alter or Amend Judgment based on the Court Ruling/Interpretation of Law used to deny correction of Major (Dr.) Whigham 1986 medical records omission. The record show Plaintiff filed Notice of Appeal 19 November 1999, to appeal U.S. District Court of Maryland's Order issued 12 November 1999. U.S. District Court of Maryland affirmed Plaintiff filed Notice of Appeal prior to this Court's ruling on the timely Fed. R. Civ. P.59 (e) motion. Plaintiff filed the Motion to Alter Judgment 5 February 1999 in response to the Courts Order issued 29 January 1999, pages App. 212-215. U.S. District Court of Maryland affirms by cited authority that Plaintiff's Motion to alter or amend Judgment is nullified by Notice of Appeal and does not invoke the Fourth Circuit's subject matter jurisdiction. See Fed R. App. P4 (a) (4) Britt v. Whitmire, 956 F.2d 5509, 515 (5th Cir. 1992). U.S. District Court of Maryland affirms: Moreover it follows that this Court is not divested of jurisdiction to consider her timely filed motion to alter or amend judgment. See Pages App. 376-397 and App. 270-280.

Basis for Jurisdiction

Ms. Edwards is before the Supreme Court as a result of the lower court's error under Federal Law. The civil record affirms U.S. District Court of Maryland misinterpreted law which in turn denied Ms. Edwards's Motion to Amend Order or in Alternative Request [to] Go On Appeal. This action under law by U.S. District Court of Maryland also denied Ms. Edwards the right of Appeal to affirm Defendants wrongful actions with finding of fact affirming destruction of the 1986 Lateral X-ray film without review. And record of proceedings affirming Summary Judgment for Defendants having reviewed the 1986 Lateral X-ray film. Defendants affirmed resolution of a factual issue for the medical record omission. The correction denial affirms no corrective action with finding showing an omission for 2 1cm nodular densities that may or may not have proved to be nipple shadows upon review of the 1986 Lateral X-ray film. Ms. Edwards is before the Supreme Court as a result of being denied a fair and equitable forum to affirm Defendants wrongful acts under Federal Law. Ms. Edwards is before the Supreme Court as the Court of last resort with finding of fact affirming District Court of Maryland is barring evidence of record in civil claim 98-930C. The civil record affirms Ms. Edwards finding of facts for destruction of the 1986 Lateral X-ray film is being barred under the Courts Order of Res Judicata which denies Plaintiff the judicial right to affirm Defendants arbitrarily and capriciously denied correction of Major (Dr.) Whigham 1986 medical records omission.

Ms. Edwards correction claim shows U.S. District Court of Maryland is denying Justice (findings for factual evidence) by barring material evidence for destruction of the Lateral X-ray film under the Court's Order of Res Judicata.

The civil record before U.S. District Court of Maryland shows this Court is barring under ORDER of Res Judicata a Federal Court finding for destruction of the 1986 Lateral X-ray film destroyed by Malcolm Grow Medical Center and Air Force Board for Correction of Military Records

(AFBCMR) in 1994 without sending notice through the Record of Proceeding filed 11 October 1994, that all records responsive to Ms. Edwards correction claim were destroyed in January 1994 or nine months before sending notice that the application is untimely.

The correction claim shows AFBCMR reviewed the 1986 medical records in 1993, but admit that they did not review the 1986 PA Chest or Lateral X-ray film. The record of proceedings shows Ms. Edwards is seeking correction of the 1986 omission with finding before Department of Veteran Affairs (1990 – 1994) showing the uncorrected medical records were used to determine if a pre-existing condition lead to the development of cancer that lead to death. The civil record (DKC-95-3115) shows Ms. Edwards' Veterans Administration claim for entitlements is denied by Department of Veterans Affairs with finding for the 1986 PA Chest and Lateral X-ray film reports affirming a Discrepancy in Interpretation (WHMC/PSRD) medical finding issued 30 September 1993 for the two medical findings. One radiology report is from Dr. Freedman who reports a finding for 2 1cm nodular densities for the PA Chest view and the other radiographic finding is from Major (Dr.) Whigham who reports no finding for 2 1cm nodular densities with this report alleging the chest is normal.

Ms. Edwards filed claim in U.S. District Court of Maryland in 1995 (DKC-95-3115) because Malcolm Grow and AFBCMR refused to correct the 1986 military record by affirming Ms. Edwards did not file the correction claim in a timely manner. Ms. Edwards filed claim under FOIA for the release of records used to affirm the correction application was not timely. DKC-95-3115 shows Defendants affirmed they are not withholding Agency records and that; there are no records responsive to the FOIA request. U.S. District Court of Maryland DISMISSED the FOIA claim and REMANDED the civil record under the provisions of Title 10 Section 1552. With finding by Judge Ellis affirming it is error for AFBCMR to import a reasonableness test into statute for the purpose of denying correction, see McFarlane v. Secretary of the Air Force.

The civil record affirms AFBCMR incurred no penalty under law for violating statue in 1994, correction denial (DK-95-3115, DKC-

97-1533 and DKC-98-4190). AFBCMR affirmed, REMANDED civil record (DKC-97-1533) that they reviewed the 1986 Lateral X-ray film to find the Lateral view taken on the same date as the PA view (under request for correction) did not reveal a finding for 2 1cm nodular densities. Thus correction of the PA Chest X-ray record is denied and U.S. District Court of Maryland affirms Summary Judgment in favor of Defendants.

Ms. Edwards filed MOTION for concurrent jurisdiction (civil claims DKC-98-4190 and 98-930C) with record of proceedings before U.S. Court of Federal Claims affirming the 1986 Lateral X-ray film used to affirm Summary Judgment before U.S. District Court of Maryland was destroyed in 1994 without review. Once again AFBCMR omitted a finding for destruction of the 1986 X-ray film in its Addendum to Record of Proceedings used to affirm Summary Judgment. The civil record shows before Ms. Edwards scheduled hearing (24 February 1999) before U.S. Court of Federal Claims, U.S. District Court of Maryland 29 January 1999 filed the ORDER of Res Judicata. Thus the evidence of record before U.S. Court of Federal Claims can never the used to affirm Malcolm Grow and AFBCMR destroyed the 1986 Lateral X-ray film without review to affirm: Defendants Lied when subjectively affirming Ms. Edwards did not file the correction claim in a timely manner.

The civil record before U.S. District Court of Maryland shows the 1986 Lateral X-ray film is alleged to affirm a factual finding for destruction of the 1986 Lateral X-ray film. With record of proceedings showing the unjustified data (Defendants Addendum to Proceedings for review of the 1986 Lateral X-ray film) is used to affirm Summary Judgment. The civil record before U.S. Court of Federal Claims shows AFBCMR destroyed the 1986 X-rays about 9-months before AFBCMR sent notice to Ms. Edwards affirming she did not file the correction application in a timely manner.

U.S. District Court of Maryland affirmed MOTION dated 1 March 1999, App. 283-285 that Ms. Edwards has chosen to file her Motion simultaneously with her notice of appeal. With the Court affirming, her filing of a Notice of Appeal prior to this Court's Ruling on her timely Fed. R. Civ. P. 59(e) motion nullifies that Notice of Appeal and does not invoke the Fourth Circuit's subject matter jurisdiction. The civil record shows The Fourth Circuit upheld all denials, to include MOTIONS filed for entrance back into the Court to present the newly discovered evidence for destruction of the 1986 Lateral X-ray film without review in 1994. The civil record shows Ms. Edwards filed MOTION for release of records before U.S. District Court of Maryland to adjoin the findings before U.S. Court of Federal Claims, with this MOTION also denied and upheld by the Court of Appeals.

Ms. Edwards filed the correction application 28 October 1992. Ms. Edwards discovered the omission Major (Dr.) Whigham omitted a radiographic finding of 2 1cm nodular densities for the written radiology record in April 1990. AFBCMR denied correction of the omission 11 October 1994 as untimely. The letter from WHMC/PSRD affirms the 1986 medical records were reviewed without release of the 1986 X-ray film for an unbiased reading before destruction. The civil record shows Ms. Edwards kept fighting for correction without knowing Malcolm Grow and AFBCMR destroyed the 1986 X-ray film long before U.S. District Court of Maryland remand and adjudicated civil claims (DKC-95-3115, DKC-97-1533 and DKC-98-4190).

Thus, Ms. Edwards is before the Supreme Court in hopes that this Court will render decisions of law based on the Courts unprecedented actions used to deny correction of the omission. With finding of fact showing Malcolm Grow and AFBCMR abused its sovereign power when affirming Major (Dr.) Whigham 1986 medical records omission does not warrant correction. Ms. Edwards prays the Supreme Court will decide to review U.S. District Court of Maryland's Orders. And thus affirm: The District Court's JUDICIAL ORDERS denies Justice and a fair and equitable forum with record of proceedings showing factual issues for destruction of the 1986 Lateral X-ray film is barred under the Courts ORDER of Res Judicata.

Ms. Edwards' case or controversy is that of standing which addresses the question of whether a party has a sufficient stake in an otherwise justifiable controversy to obtain judicial resolution of that controversy and for Malcolm Grow and AFBCMR's statute violations.

The Supreme Court has made clear that [t]he actual or threatened injury required by article III may exists solely by virtue of statutes creating legal rights, the invasion of which creates standing, thus the Supreme Court accordingly have heard litigants who would have lacked standing absent such statutes.

Ms. Edwards is before the Supreme Court with finding of fact showing U.S. District Court of Maryland under ORDER of Res Judicata is barring evidence of record in U.S. Court of Federal Claims that should be heard to affirm Malcolm Grow and AFBCMR violated federal statues when affirming a review for the 1986 Lateral X-ray film (Summary Judgment) with this material fact also showing Defendants violated statute when affirming correction as untimely in 1994. The civil record before U.S. District Court of Maryland shows the COURT affirmed it was error to import a reasonableness standard into statute, but Defendants received no penalty under law for this violation.

Ms. Edwards is before the Supreme Court with regard to a litigants standing to raise federal questions as itself a federal question, to thus allow the Supreme Court to find U.S. District Court of Maryland lacked jurisdiction over the substantive federal question involved and to vacate the judgment, thus allowing material facts for destruction of the 1986 Lateral X-ray film to be presented and thus affirm "there clearly exists factual issues that properly can be resolved only by a finder of fact because they may be reasonably resolved in favor of either party".

Ms. Edwards also request this Court penalize Malcolm Grow and AFBCMR if the finding of fact per Court records DKC-95-3115, DKC-97-1533 and DKC-98-4190 affirm Defendants abused its sovereign power in 1994 when denying correction based on Judge Ellis RULING in McFarlane v. Secretary of the Air Force.

CASE SUMMARY

Ms. Edwards is the widower of the late Hartwell E. Edwards. Mr. Edwards served 28 years in the United States Air Force and after retirement from the Air Force, died in 1988 of Squamous Cell Carcinoma. His widowed wife discovered in 1990 (medical report from Doctor Freedman who read the 1986 PA Chest X-ray film in 1990) that Malcolm Grow and AFBCMR omitted from the medical X-ray report (written by Malcolm Grow in 1986) a finding for 2 1 cm nodular densities.

Several doctors reviewed the 1986 PA Chest Report (with omissions) and Lateral X-ray report, to include medical records released by Malcolm Grow in 1989 and 1990. The record of proceedings before U.S. District Court of Maryland affirms a discrepancy that has not been resolved by the Court with finding of fact showing "No unbiased reading" for the 1986 Lateral X-ray film used to affirm Summary Judgment (DKC-95-3115, DKC-97-1533) DKC-98-4190 and 98930C).

DKC-97-1533 shows AFBCMR's Addendum To Record of Proceedings affirmed an unbiased reading for the 1986 Lateral X-ray film, but Ms. Edwards discovered in civil claim 98-930C that Defendants, capriciously and fraudulently affirmed review of the 1986 Lateral X-ray film taken on the same date as the PA Chest X-ray view. The records before U.S. District Court of Maryland show Defendants' affirmed they reviewed the 1986 Lateral X-ray film to find: It was not unusual for Malcolm Grow to omit a medical finding for the PA Chest X-ray report record; since the lateral X-ray film taken on the same date did not reveal nodular densities found by review of the 1986 PA Chest film.

The civil record shows Ms. Edwards discovered in civil claim 98-930C that Defendants did not review the 1986 PA Chest frontal X-ray film and did not review the 1986 Lateral X-rays taken on the same date as the PA views on which the Whigham report is based..." See findings by the BOARD for

Major Whigham's 1986 radiographic omission, DKC-95-3115, DKC-97-1533 and DKC-98-4190. Ms. Edwards affirmed under JUST CAUSE that she is requesting copies of all of Malcolm Grows 1986 radiology film based on findings by the Court for Major Whigham's 1986 radiographic omission. With filing of claim affirming MOTION for Concurrent Jurisdiction 28 December 1998 under the provisions of 28 U. S. C. Section 1346, with findings of fact having arose (Defendants admission DKC-97-1533 for review of the 1986 Lateral X-ray film) without release of records to affirm Major (Dr.) Whigham did not error when choosing to omit a radiographic finding for 2 1cm nodular densities (1986 PA Chest X-ray report). DKC-97-1533 shows the Court affirm Ms. Edwards is trying to renew the FOIA claim, so all records with respect to Defendants having affirmed review for the 1986 Lateral X-ray film is denied with finding of fact affirming Summary Judgment 22 September 1998.

On 29 January 1999, U.S. District Court of Maryland ORDERED that: The cause of action for civil claim DKC-98-4190 IS DISMISSED as barred under the doctrine of Res Judicata without release of records to affirm the 1986 Lateral X-ray film was reviewed by an unbiased medical professional with report of finding for this film released to Ms. Edwards.

The civil record affirms Ms. Edwards on February 8, 1999 filed document titled "MOTION to Amend ORDER or in the Alternative Request [to] Go On Appeal". U.S. District Court of Maryland affirmed "Filing of a Notice of Appeal prior to this Court's ruling on her timely Fed. R. Civ. P. 59(e) motion (Ms. Edwards received the 29 January 1999 ORDER) but the Court affirmed her MOTION is nullified to the point that Notice of Appeal cannot be invoked for Fourth Circuit's subject matter jurisdiction.

Civil claim 98-930C affirms U.S. Court of Federal Claims heard Ms. Edwards request for release of all records used to affirm Major (Dr.) Whigham did not error when he chose to omit the radiographic finding for the 1986 PA Chest X-ray report. Facts in omission show no correction for 2 1cm nodular densities with Summary Judgment affirmed DKC-97-1533. On 24 February

1999, Ms. Edwards received a copy of the Memorandum for Ms. Monica Palko from AFLSA/JACL (Request as stated in civil claim 98-930C) this record affirms AFBCMR destroyed the 1986 PA Chest and Lateral X-ray film without review in 1994 under the provisions of AFMAN 37-139, Table 44-3, Rules 8 and 10.

Ms. Edwards on 5 November 1999 sent MOTION To U.S. District Court of Maryland requesting DKC-98-4190 be reopened based on Newly Discovered Evidence Affirming Federal Violations Not In Admission Before United States District Court of Maryland for Civil Complaint DKC-95-3115, and REMANDED Civil Complaint DKC-97-1533. U.S. District Court of Maryland denied Ms. Edwards request to reopen DKC-98-4190 with claim that Plaintiff has moved to reopen this case based on allegedly newly discovered evidence not available for use in her two prior cases, 95-3115 and 97-1533. U.S. District Court of Maryland RULED 12 November 1999 that Ms. Edwards' complaint was dismissed on grounds of Res Judicata and that under the most generous perspective, Plaintiff is attempting to obtain relief under Fed. R. Civ. P. 60(b) in the two earlier cases. U.S. District Court of Maryland affirm there is a one year time limit; however, for moving for relief from a judgment due to newly discovered evidence. The Court affirms it is far too late to seek relief from the earlier judgments. The civil record shows this Memorandum and ORDER from U.S. District Court of Maryland is upheld on Appeal 19 January 2000.

Department of the Air Force affirmed under FOIA, 10 August 2000 see letter from 11 CS/SCS that AFLSA/JACL date for destruction of the 1986 PA Chest and Lateral X-ray film is correct. Thus, Ms. Edwards FOIA request in addition with finding of fact in civil claim 98-930C affirm these film were destroyed in January 1994 without review before destruction. With finding of fact still affirming Summary Judgment in civil claim DKC-97-1533 for review of the 1986 Lateral X-ray film and DKC-98-4190 still affirming material factual evidence "that should be resolved by finder of facts; instead Record of Appeal affirms U.S. District Court of Maryland did not error.

Ms. Edwards is before the U. S. Supreme Court with claim U.S. District Court of Maryland inappropriately resolved (DKC-953115, DKC-97-1533 and DKC-98-4190). Plaintiff filed Motion for Concurrent Jurisdiction and Plaintiff filed Motion to Amend Judgment or in the Alternative go on Appeal. But Record of Proceedings before U.S. District Court of Maryland affirm the evidence for destruction of the 1986 X-ray film is barred under U. S. District Court of Maryland's ORDER of Res Judicata. The civil claim affirms the Courts findings are upheld on Appeal.

Ms. Edwards is before the U.S. Supreme Court because the correction claim affirms a gross miscarriage of justice. The civil claim before U.S. District Court of Maryland affirms Ms. Edwards is denied the release of public records used by U.S. District Court of Maryland to affirm a factual unbiased finding for the 1986 Lateral X-ray film. The civil record before U.S. District Court of Maryland shows the Court ORDERED Ms. Edwards correction claim be dismissed and barred the finding of newly discovered evidence in civil claim 98-930C that shows Defendants capriciously and fraudulently affirmed there's no injustice data to warrant correction (1997 correction denial). DKC-95-3115 shows U.S. District Court of Maryland Remanded the civil claim back to AFBCMR for the 1994 correction denial. The correction claim shows AFBCMR affirmed for the Remanded civil record there's no injustice data to warrant correction of Major (Dr.) Whigham 1986 medical records omission with U.S. District Court of Maryland affirming Summary Judgment (DKC-97-1533).

The civil record affirms Ms. Edwards sent MOTION to U.S. District Court of Maryland, certification of notice 5 December 2001 for release of records in civil claims DKC-95-3115, DKC-971533 and DKC-98-4190 to United States Court of Federal Claims. This request was denied by U.S. District Court of Maryland, and upheld on Appeal.

The civil record affirms Ms. Edwards filed MOTION for Entrance back into U.S. District Court of Maryland 1 March 2002. The civil record affirms U.S. District Court of Maryland denied this MOTION 8 March 2002. The ORDER issued 8 March 2002 from U.S. District Court of Maryland shows the Court affirms Ms. Edwards' actions were dismissed on September 24, 1998 and January 29, 1999 respectively. On December 7, 2001 U.S. District Court of Maryland denied Plaintiff MOTION for release of records to the United States Court of Federal Claims. On December 18, 2001, Ms. Edwards filed a consolidated motion to reconsider the aforementioned decision. U.S. District Court of Maryland denied reconsideration January 9, 2002 with this appeal upheld by the Fourth Circuit. The civil record affirms U.S. District Court of Maryland denied Ms. Edwards 1 March 2002 MOTION to set-aside the Courts previous decision. **The ORDER from United States Court of Appeals filed 8 July 2002 again upholds U.S. District Court of Maryland's denial (Motion to Reconsider)** facts that should be in evidence to affirm Defendants 1994 and 1997 Federal/Statute Violations.

The civil record affirms Ms. Edwards is denied justice for correction of the omission with Defendants alleging all relief for the 1986 omission should be denied even with evidence in admission, affirming Major (Dr.) Whigham chose to omit from the written medical record all medical findings for the 1986 PA Chest X-ray report. The civil record before U.S. District Court of Maryland and upheld by U.S. Court of Appeals affirm correction is being unjustifiably denied and all relief for this injustice is denied; with record of proceedings affirming Ms. Edwards is being unfairly barred under MOTION for Concurrent Jurisdiction from presenting evidence of record to affirm Malcolm Grow and AFBCMR willful actions. See U.S. District Court of Maryland's ORDER issued 1 March 1999 that shows: Filling of a Notice of Appeal prior to this Court's ruling on her timely Fed. R. Civ. P. 59(e) motion nullifies that Notice of Appeal and does not invoke the Fourth Circuits subject matter jurisdiction. This Ruling by U.S. District Court of Maryland affirms Ms.

Edwards is denied a fair and equitable forum with finding of fact affirming: Malcolm Grow and AFBCMR violated Federal statute when affirming Ms. Edwards did not file the correction claim in a timely manner (I 994 correction denial).

The civil record before U.S. District Court of Maryland affirms Ms. Edwards is barred from presenting material facts for destruction of the 1986 Lateral X-ray film used to affirm Summary Judgment 97-1533. And barred by Court ORDER Civil Claim DKC-95-3115 for release of records that Defendants used to affirm the 1986 Lateral X-ray film revealed a finding that can be used to affirm Major (Dr.) Whigham did not error when omitting medical facts for 2 1 cm nodular densities. The civil record before U.S. District Court of Maryland affirms Ms. Edwards filed MOTION for concurrent jurisdiction 98-4190 and 98-93OC. And that U.S. District Court of Maryland ORDERED Ms. Edwards to show JUST CAUSE. At issue: Concurrent jurisdiction with U.S. Court of Federal Claims for the release of the 1986 Lateral X-ray film and unbiased film reports used by Defendants to affirm Summary Judgment (DKC-97-1533). The record of proceedings for (DKC-97-1533) shows U.S. District Court of Maryland barred all requests for release of records (see page App. 165 - comment 4) to affirm the Court states: Plaintiff is without the benefit of counsel and this lack of assistance makes her complaint somewhat difficult to decipher. It appears that, in addition to her claim regarding her husband's military records, Plaintiff renews her FOIA claim and her claim for damages. **"Those claims, however, are barred by this Court's prior opinion"** (DKC-953115).

Plaintiff finds the civil record (DKC-98-4190 "JUST CAUSE") under fairness of law affirms the following material facts that denies justice: (1) U.S. District Court of Maryland did not compel Defendants to release records (DKC-95-3115) related to finding of fact used to deny correction of the 1986 medical record. With the civil record affirming U.S. District Court REMANDED the correction claim for further proceedings. (2) DKC-97-1533 affirms the Court affirmed Summary Judgment with Defendants affirming they are not persuaded an injustice exists ("STILL WITHOUT RELEASE OF RECORDS) Defendants used to affirm a material fact for the 1986 Lateral X-ray film used under statute to affirm the correction denials (1994 and 1997 denials) raises no issues of error or injustice that requires resolution on the merits. The civil claim filed under MOTION for concurrent jurisdiction (DKC-98-4190) shows U.S. District Court of Maryland barred the correction claim before allowing Ms. Edwards a fair and equitable forum to affirm Defendants Federal/Statute Violations DKC-98-4190 and 98-930C. Ms. Edwards affirm under response for (JUST CAUSE) that the Court should be concerned with whether or not there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.

U.S. District Court of Maryland affirmed without Final Judgment (no finding for Defendants liability for violating Judge Ellis Ruling in McFarlane v. Secretary of the Air Force) that it was error to import a reasonableness standard into statute (1994 correction denial). U.S. District Court of Maryland affirmed DKC-97-1533 without finding of fact for review of the 1986 Lateral X-ray film: If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. The civil record before U.S. District Court of Maryland shows Defendants affirmed Summary Judgment without releasing a unbiased medical finding for the 1986 Lateral X-ray film used to affirm Summary Judgment. **U.S. District Court of Maryland's ORDER issued 22 September 1998 affirm in error a factual finding never reviewed, but used to affirm Major (Dr.) Whigham did not error when he chose to omit a radiographic finding for 2 1 cm nodular densities.** The record before U.S. Court of Federal Claims (98-930C) barred by Court ORDER shows Defendants destroyed the 1986 Lateral X-ray film used to affirm Summary Judgment, without review, long before Defendants affirmed under Federal Statute that Ms. Edwards did not file the application in a timely manner. The civil record shows Ms. Edwards affirm she did not receive justice or a fair and equitable forum with finding of fact showing Ms. Edwards requested entrance back into the Court to present newly discovered evidence for destruction of the 1986 Lateral X-ray film, but this MOTION is denied by U.S. District Court of Maryland who affirm by COURT ORDER November 12, 1999: Plaintiff has moved to reopen this case based on **"Allegedly newly discovered evidence"** not available for use in her two prior cases DKC-95-3115 and DKC-97-1533. U.S. District Court of Maryland affirm (in error Concurrent Jurisdiction Barred) "There is a one year time limit" for moving for relief from a judgment due to newly discovered evidence. The civil record affirms Plaintiff moved to reopen within one year.

DKC-95-3115 shows U.S. District Court of Maryland dismissed Ms. Edwards FOIA claim without release of records Defendants used to affirm the 11 October 1994 no injustice for the subjective correction denial. 98-930C shows Ms. Edwards is being denied a fair and equitable hearing with issue for the 1994 statute denial affirming Defendants subjective denial without a finding of material fact for review of the 1986 Lateral X-ray film. The record before U.S. District Court of Maryland shows **"No records were released",** to affirm the 1986 PA Chest and Lateral X-ray film was destroyed in January 1994 or 9 months before Ms. Edwards received notice that she did not file the correction application in a timely manner. See U.S. District Court of Maryland ORDER, DKC-95-3115 issued 11 October 1996 to affirm: "It may have been error for AFBCMR to use a reasonableness test for timeliness based on Judge Ellis RULING in McFarlane v. Secretary of the Air Force". DKC-953115, DKC-97-1533 and DKC-98-4190 shows "As we discussed infra, there has been "NO FINAL JUDGMENT" rendered by U.S. District Court of Maryland to affirm Defendants Federal Violations under statute for the 1994 correction denial.

DKC-98-4190 shows U.S. District Court of Maryland barred further proceedings and 98-930C affirms **"No unbiased reading"** for review of the 1986 Lateral X-ray film. Plaintiff affirms under "JUST CAUSE" that the Board wrongfully denied the 1994 correction application as untimely. DKC-97-1533 shows Defendants affirm (Addendum to Record of Proceedings) **"We do not find it unusual that Malcolm Grow Medical Center did not**

note the presence of nodular densities/nipple shadows on the PA view of the 1986 X-ray film since the X-ray film taken on the same date from the lateral view did not reveal the nodular densities/nipple shadows". See Defendants 1994 Record of Proceedings that denied correction by alleging Ms. Edwards did not file the correction application in a timely manner. And see Defendants 1997 Addendum To Record of Proceedings to affirm correction is denied by alleging the 1986 Lateral X-ray film was read by an independent unbiased medical professional.

The civil record before U.S. District Court of Maryland, upheld by U.S. Court of Appeals for the Fourth Circuit shows Ms. Edwards is denied all fairness under law with request being correction of the 1986 medical records omission. See Defendants Record of Proceedings and Addendum to Record of Proceedings to affirm: Defendants first affirmed statute violations and then later affirmed a finding for the 1986 Lateral X-ray film with finding before U.S. Court of Federal Claims showing the 1986 Lateral X-ray film was destroyed in 1994 without review.

The civil record before U.S. District Court of Maryland, upheld by U.S. Court of Appeals for the Fourth Circuit shows Ms. Edwards is denied all fairness under law with request being correction of the 1986 medical records omission. See Defendants Addendum To Record of Proceedings (DKC-97-1533) filed as a matter of law based on ORDER by U.S. District Court of Maryland (DKC-95-3115, Remanded Civil Claim). The record based on the Court Remanding the Correction claim for (1994 statute violations) shows Ms. Edwards was denied all claims for damages with record of proceedings showing Defendants erred based on Judge Ellis RULING in McFarlane v. Secretary of the Air Force. The correction claim (DKC-95-3115, DKC-97-1533 and DKC-98-4190) filed under the provisions of Title 10 Section 1552 shows Ms. Edwards is denied correction and denied relief for damages with record of proceedings showing the evidence Ms. Edwards should use to affirm Defendants Federal Violations is barred by Court Order. The records barred by U.S. District Court of Maryland ORDER have been affirmed to show the 1986 Lateral X-ray film was destroyed in 1994 without an unbiased reading to affirm the Lateral view did not reveal nodular densities as found by reading the 1986 PA Chest X-ray film. The civil record affirms Ms. Edwards is denied the release of the 1986 Lateral X-ray film before destruction for finding if a pre-existing condition lead to the development of cancer and for resolution of the discrepancy in interpretation (see WHMC/PSRD letter dated 30 September 1993, page App. 3). Ms. Edwards state the civil record before U.S. District Court of Maryland shows, Plaintiff is denied under law a medical finding that was used to determine the eligibility of benefits (100% disability under service related entitlements) through Department of Veterans Affairs. With Record of-Proceedings DKC-95-3115 and DKC-97-1533 showing each doctor gave medical reviews (without resolution of the 1986 medical records) that Defendants knew omitted medical facts for 2 1cm nodular densities. To include Defendants knew there's an absence of facts for the 1986 Lateral views with the issue being Plaintiff affirmed Major (Dr.) Whigham omitted medical facts for the 1986 PA Chest X-ray record.

98-930C affirms Ms. Edwards discovered facts for destruction of the 1986 Lateral X-ray film 24 February 1999 with request under FOIA, 10 August 2000 affirming the X-ray film was destroyed without review. See U.S. District Court of Maryland ORDER issued 29 January 1999 to affirm all records under civil claim 98930C is barred. With action by this Court affirming Ms. Edwards' correction claim is DISMISSED.

The records barred by Court ORDER shows Ms. Edwards is denied Justice with U.S. District Court of Maryland and Defendants affirming DKC-95-3115, DKC-97-1533 and DKC-984190 (Addendum To Record of Proceedings): "No injustice data" has been presented to warrant correction of Major (Dr.) Whigham 1986 admitted medical records omission.

The civil record before U.S. District Court of Maryland shows this Court is **compounding the errors under proceeding (DKC-95-3115, DKC-97-1533 and DKC-98-4190)** by affirming Ms. Edwards is attempting to relitigate issues that have heretofore been exhaustively reviewed and ruled on by the Court. The civil record before the Court affirms **"No Release of Records"** for review of the 1986 Lateral X-ray film" Defendants affirm were taken on the same date as the 1986 PA

Chest X-rays. Defendants affirmed the Lateral views did not reveal a finding for 2 1-cm nodular densities.

Ms. Edwards' civil claim shows U.S. District Court of Maryland allege (with material records barred for destruction of the 1986 Lateral X-ray film) that Plaintiff was provided a fair and equitable forum in which to have her tort claim heard. Ms. Edwards is before United States Supreme Court because the civil Record of Proceedings affirms **she did not receive a fair and equitable forum.** See 95-3115 with finding of fact showing Malcolm Grow and AFBCMR erred when affirming in 1994 that Plaintiff did not file the correction claim in a timely manner. U.S. District Court of Maryland REMANDED the civil claim without relief for damages with error being Defendants imported a reasonableness standard into statute for the 1994-correction denial. DKC-95-3115 affirms Ms. Edwards received "No Relief for Damages" with record of proceedings affirming Defendants violated Judge Ellis RULING in McFarlane v. Secretary of the Air Force.

Ms. Edwards affirm she did not receive a fair and equitable forum with finding of fact affirming the 1986 Lateral X-ray film was destroyed before Defendants sent notice to affirm Plaintiff did not file the correction application timely. And Record of Proceedings affirm the Court did not COMPEL Defendants to affirm under Federal Law an unbiased review for the 1986 Lateral X-ray film used to affirm Major (Dr.) Whigham did not error. With Record of Proceedings affirming Plaintiff's correction claim is denied and all relief for damages is denied. The Record of Proceedings before U.S. District Court of Maryland DKC-98-4190 shows Plaintiff is forever barred from presenting evidence that should be used to affirm Defendants Federal and Statute Violations.

Ms. Edwards affirm she did not receive a fair and equitable forum with 98-4190 (JUST CAUSE) when U.S. District Court of Maryland RULED the civil claim is barred under ORDER of Res Judicata. Ms. Edwards affirms she did not receive a fair and equitable forum with the following facts in evidence. (1) U.S. District Court of Maryland affirmed the Motion to Amend Order or in the Alternative Request [to] Go on Appeal filed 10 days after the entry of an order dismissing this case, concerned a substantive challenge to the Courts RULING was filed simultaneously with Notice of Appeal. (2) U.S. District Court of Maryland affirmed, this Court is not divested of jurisdiction to consider her timely filed motion to alter or amend judgment. (3) Filing the Motions simultaneously nullifies that Notice of Appeal and does not invoke the Fourth Circuits subject matter jurisdiction. See App. 283-285 for filing Motions on pages App, 270-282 and App. 333-345.

The civil record (DKC-95-3115, DKC-97-1533, DKC-98-4190 and 98-930C) affirms Ms. Edwards never received relief for Defendants 1994 and 1997 Federal and Statute Violations. The civil record affirms the 1986 PA Chest X-ray report has never been corrected or modified to show a medical finding for 2 1 cm nodular densities with Defendants affirming "No injustice data exists Record of Proceedings pages App1-2 and Addendum to Record of Proceedings pages App. 5-9.

Record of Proceeding before U.S. District Court of Maryland shows the late Hartwell E. Edwards died from lung cancer in 1988 with Malcolm Grow discovering the cancerous nodular densities in 1987. The civil record affirms there has been no finding of fact to affirm a pre-existing condition that lead to the development of cancer with record of proceedings affirming a discrepancy in interpretation (Medical report from WHMC/PSRD dated 30 September 1993) pages App. 3-4.

The civil record shows Defendants admit Major (Dr.) Whigham chose to omit a radiographic finding for the 1986 PA Chest X-ray record report (DKC-97-1533 Defendants Memorandum of Law). The civil record also shows, no lateral film or unbiased records has been released to show a reading for the 1986 Lateral X-ray film. With finding of fact for the 1986 Lateral X-ray film (DKC-97-1533) showing Defendants affirmed a material facts used to deny correction. With civil claim 98-930C showing no medical professional reviewed the 1986 Lateral X-ray film before destruction in 1994 (Remanded Civil Claim).

See Defendants Record of Proceedings and Addendum to Record of Proceedings to affirm facts in dispute. (WHMC/PSRD) affirm the central question centers around a discrepancy in interpretation of a chest radiograph done on 10/2/86 at Malcolm Grow USAF Medical Center. **With radiograph interpreted by Dr. William Whigham as being normal. No lung nodules were described.** Copies of this radiograph and other radiographs were sent to Dr. Matthew Freedman at Georgetown University Hospital. Dr. Freedman interpreted the radiograph as "two 1cm nodular densities projecting over both lower lung fields are consistent with nipple shadows, although films with nipple markers would be valuable in confirming this. The civil record affirms no review of the chest X-rays with nipple markers and no review for the 1986 Lateral X-ray film used to affirm Summary Judgment DKC-97-1533. The Record of Proceedings affirms Plaintiff is barred from presenting evidence to affirm Defendants destroyed the 1986 X-ray film without review. **WHMC/PSRD letter shows Ms. Edwards asked whether nodules seen on a chest X-ray should be seen on all subsequent X-rays.** To this question WHMC/PSRD states: "The nature of lung nodules due to overlying nipple shadows is such that they are often only seen when the patient is imaged in a certain position and therefore often times not reproducible. Defendants Memorandum of Law…. Motion to Dismiss page App. 142-151 affirm on page App. 148-149 Major (Dr.) Whigham reviewed Chest: Standard radiographs of the chest in the frontal and lateral projections that show no abnormality of the heart, lungs, mediastinum or bony thorax. IMPRESSION NORMAL CHEST. Major (Dr.) Whigham medical record for the 1986 omission affirms no finding for the patient being imaged in a certain position to show if the nodules were reproducible (WHMC/PSRD). And shows no finding as given by Dr. Freedman 16 April 1990 for two 1cm nodular densities, see DKC-95-3115, DKC-97-1533 and DKC-98-4190 to affirm facts in omission for nodulars.

Malcolm Grow Medical Center and AFBCMR in 1994 and 1997, Defendants Record of Proceedings and Addendum to Record of Proceedings respectively, denied Ms. Edwards under the fourteenth Amendment, Due Process, with finding of fact for the correction denials (1994 and 1997) now affirming the 1986 PA Chest and Lateral X-ray film and all records for these film were destroyed in 1994 without review by AFBCMR and Malcolm Grow before Ms. Edwards received notice (11 October 1994) that she did not file the correction application timely. The finding before U.S. District Court of Maryland, affirms correction is denied for the Remanded Civil record with AFBCMR concluding the 1986 Lateral X-ray film did not reveal a finding for 2 1cm nodular densities. Ms. Edwards in 1992 filed for correction of the radiographic omission under Title 10, Section 1552 after discovering Major (Dr.) Whigham omitted a radiographic finding for 2 1cm nodular densities.

The civil record affirms U.S. District Court of Maryland affirmed Summary Judgment (DK-97-1533 and that Ms. Edwards filed MOTION for concurrent jurisdiction DKC-98-4190 and 98-930C) but U.S. District Court of Maryland DISMISSED and barred Ms. Edwards MOTION for Concurrent Jurisdiction before receiving finding of fact to affirm the 1986 Lateral X-ray film was destroyed without review by the "Board" in 1994 (Remanded civil claim). The finding of fact before U. S. Court of Federal Claims (98-930C) also affirms, the 1986 X-ray film was destroyed before Ms. Edwards brought claim under 5 U. S. C, Section 552 (DKC-95-3115) with this record of proceeding affirming Defendants is not withholding agency records; thus Ms. Edwards FOIA claim is DISMISSED. Finally the finding of fact in civil claim 98-930C affirms Malcolm Grow and AFBCMR destroyed the 1986 PA Chest and Lateral X-ray film without a unbiased reading for these film with record of proceedings affirming the "Board" concluded without facts to support its substantive conclusions that Major (Dr.) Whigham did not error and that Ms. Edwards correction claim filed under statute should be denied as untimely (DKC-95-3115 with affirmations in DKC-97-1533 affirming "There's no injustice data to warrant correction. With finding of fact alleging the 1986 Lateral X-ray film did not reveal 2 1cm nodular densities per claim by Ms. Edwards with finding for the1986 PA Chest X-ray film.

Ms. Edwards argues, U.S. District Court of Maryland under ORDER of Res Judicata barred Plaintiffs forum (discovery of evidence under MOTION for Concurrent Jurisdiction) that should be used to affirm Malcolm Grow and AFBCMR federal violations that unjustifiably denied the 1994 and 1997 corrections. The civil record before U. S. District Court of Maryland affirms Malcolm Grow and AFBCMR received no penalties under law (Edwards v. Secretary of the Air Force) for having violated Judge Ellis Ruling in McFarlane v. Secretary of the Air Force with finding of fact denied that should be used to affirm the 1986 X-ray film without a unbiased reading were destroyed (without finding of fact for the films destruction) before Ms. Edwards filed civil claim DKC-95-3115 under 5 U. S. C. Section 552. The civil record before U.S. District Court of Maryland affirms Ms. Edwards is denied all compensation (punitive damages) for the 1994 and 1997, Federal and State Violations with finding the Federal violations falls under the Fourteenth Amendment of the Constitution protected by Statue and the Bill of Rights, Amendment VII with record of proceedings affirming a jury trial is also denied.

Ms. Edwards argues AFBCMR, correction denials (1994 and 1997) denies substantive right protected by statute, and thus underlies Due Process under the Fourteenth Amendment with record before U.S. District Court of Maryland affirming Ms. Edwards paid to have many doctors review the uncorrected medical records with the medical reports affirming a Discrepancy in Interpretation (Defendants 1993 Record of Proceedings from WHMC/PSRD dated 30 September 1993). Ms. Edwards argues, the civil correction record filed under the provisions of Title 10 Section 1552, was destroyed without notice (Defendants Record of Proceedings and Addendum to Record of Proceedings) to inform and affirm the 1986 X-ray film and all records for these film have been destroyed under

AFMAN 37-139, Table 44-3, Rules 8, and 10, see Malcolm Grows and AFBCMR's Record of Proceedings and Addendum to Record of Proceedings.

The correction claim before U.S. District Court of Maryland (DKC-97-1533) shows AFBCMR nullified the medical findings for the 1986 PA Chest X-ray film by fraudulently affirming the "Board" reviewed the 1986 Lateral X-ray film taken on the same date; thus affirming the Lateral view did not reveal nodular densities with request under Title 10, Section 1552 affirming a radiographic error for the 1986 PA Chest X-ray report.

Ms. Edwards argues the Record of Proceedings for 1994 and 1997 still affirm correction is denied with ORDER from U.S. District Court of Maryland affirming Ms. Edwards claim for punitive damages in the amount of 5.5M is denied along before Plaintiff receives a fair and equitable forum to affirm Malcolm Grow and AFBCMR's Federal Violations. The civil claim shows Ms. Edwards wanted copies of the Lateral X-ray film used to affirm Summary Judgment in civil claim DKC-97-1533. Ms. Edwards argued in civil claim 98-930C that the release of the 1986 Lateral film would be used to affirm/final resolution of claim for a pre-existing condition (nodular densities) that lead to the development of cancer that lead to death. DKC-95-3115 affirms Ms. Edwards lost her Veterans Administration claim using the uncorrected medical records with AFBCMR affirming there's "No Injustice Data for the medical facts in omissions for the 1986 PA Chest radiology report. Ms. Edwards argues the civil record still affirms without correction of the omission that the 2 1cm nodular densities found by review of the 1986 PA Chest X-ray film is alleged to not represent a finding for a pre-existing condition that lead to death. With finding of fact in the civil record DKC-97-1533 affirming Summary Judgment and Ms. Edwards discovering (Concurrent Jurisdiction claim) the 1986 Lateral X-ray film is destroyed without receipt of an unbiased reading to affirm Defendants substantive conclusions used to deny correction. See Memorandum from AFLSA/JACL dated 24 February and FOIA letter from CS/SCS dated 10 August 2000 to affirm the 1986 Lateral X-ray film was destroyed before Ms. Edwards received notice that she did not file the correction claim in a timely manner.

Ms. Edwards argues, she has been denied a fair and equitable forum before U.S. District Court of Maryland to present newly discovered evidence for destruction of the 1986 Lateral X-ray film with DKC-98-4190 affirming the evidence of record before U.S. Court of Federal Claims is barred by Court ORDER. Ms. Edwards' argues, AFBCMR Record of Proceedings (contract issued 11 October 1994) shows the government wrote the correction denial statute solely to exclude recognition of any entitlements, thereby making Ms. Edwards totally dependant on the "Boards" Generosity. The finding of fact for the "Board" generosity affirms Correction is denied with the "Board" unjustifiably affirming: "After careful consideration of applicant's request and the available evidence of record, we find the application untimely".

Ms. Edwards argues the civil record before U.S. District Court of Maryland affirms Plaintiff was/is deprived/denied (MOTION) filed for Concurrent Jurisdiction with procedural hearing before U. S. Court of Federal Claims (98-930C) affirming the 1986 Lateral X-ray film is destroyed without an unbiased reading for the film. Ms. Edwards' argues there have been "No hearings" for the governments deprivations in civil claims (DKC-95-3115, DKC-97-1533 and DKC-98-4190) with record in DKC-95-3115 affirming Ms. Edwards is denied relief even if she proves the government violated statute. Ms. Edwards argues, the Court's denial of relief/punitive damages with finding of fact for the government having violated statute and fraudulently Lying to affirm a finding for the 1986 Lateral X-ray film is inconsistent with State and Federal Law and affirms the individual affected by (summary judgment reversal) is denied all relief with record of proceedings affirming the governments wrongful acts.

Ms. Edwards is before the Court of Last Resort, in hopes that this Court will define and protect the substantive and procedural rights that U.S. District Court of Maryland ignored or just affirmed mistakenly. U. S. District Court of Maryland affirmed Ms. Edwards is barred under ORDER of

Res Judicata from presenting newly discovered evidence for destruction of the 1986 Lateral X-ray film used to affirm Summary Judgment. Ms. Edwards prays the new finding by this Court affirms, the newly discovered evidence for the 1986 Lateral X-ray film should be presented to affirm the injustice data used to affirm Summary Judgment in civil claim DKC-97-1533 and to affirm Defendants did withhold agency records, civil claim DKC-95-3115 with finding of fact affirming Plaintiff FOIA claim for release of records is DISMISSED and all claims for relief are DISMISSED.

AFFIDAVIT

I, Myra R. Edwards affirm the Agency records submitted are copies of Malcolm Grow and AFBCMR's statutes for Record of Proceedings and Addendum to Record of Proceedings. Ms. Edwards affirm the Court ORDERS submitted by this affidavit are records that were reviewed from United States District Court of Maryland and United States Court of Appeals for the Fourth Circuit. Ms. Edwards affirm the records from U.S. Court of Federal Claims that are now affirmed by the 2000 FOIA request, represents newly discovered evidence that should be apart of the hearings before U.S. District Court of Maryland.

Signed: Myra R. Edwards

CERTIFICATION OF SERVICE

I, Myra R. Edwards affirm that on this 20th day of September 2002 or no later than 23 September 2002 this petition For Writ of Certiorari is being sent by United Parcel Service or Federal Express with notification of shipment released to Ms. Edwards. This Writ of Certiorari is being by United Parcel Service or Federal Express to:

Clerk,
U.S. Supreme Court
U.S. Supreme Court Bldg.
Washington, DC 20543

A copy of this petition (Writ of Certiorari) is being sent by first class mail, postage paid by Myra R. Edwards on this 20th day of September 2002 or no later than 23 September 2002 to:

Department of the Air Force
AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, MD 20762-7002

Department of the Air Force
Legal Office
Malcolm Grow USAF Medical Center
Andrews AFB, MD 20331-5300

Lynne A, Battaglia
United States Attorney
Attn: Larry Adams
Assistant United States Attorney
604 United States Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

Honorable John Ashcroft
Attorney General
Department Of Justice
10th and Constitution Avenues, NW
Washington, DC 20530

With curiosity copy being sent by first class mail this 9th day of September 2002 to:

Department of the Air Force
Headquarters Air Force
Military Personnel Center
Randolph Air Force Base, TX 78150

Signed: Myra L. Edwards

APPENDIX

(Attachments referenced in the Appendices are omitted, except for those attachments referenced in Plaintiff's Writ of Certiorari)

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: HARTWELL E. EDWARDS
(DECEASED) SSN: 513-30-5804

DOCKET NO: 93-02789 11Oct 1994

Applicant requests her late husband's records be corrected to show that the chest x-rays reports for 1978, 1980, 1981, and 1986 showed that a diagnosis of lung cancer. Applicant's submission is at Exhibit A.

The appropriate Air Force offices evaluated applicant's request and provided advisory opinions to the Board recommending the application be denied (Exhibit C). The advisory opinions were forwarded to the applicant for review and response (Exhibit D). Applicant's responses to the advisory opinions are at Exhibit E.

After careful consideration of the applicant's request and the available evidence of record, we find the application untimely. Applicant did not file this request within three years after the alleged error or injustice was discovered, or reasonably could have been discovered, as required by 10, U. S. C. 1552 and Air Force Regulation 31-3. Applicant has not shown a plausible reason for the delay in filing, and we are not persuaded that the record raises issues of error or injustice, which require resolution on the merits. Thus, we cannot conclude it would be in the interest of justice to excuse applicant's failure to file in a timely manner.

Accordingly, applicant's request is denied as untimely.

The Board staff is directed to inform applicant of this decision. Applicant should also be informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence, which was not reasonably available at the time the application was filed.

Members of the Board Mr. Henry C. Saunders, Mr. C. Bruce Braswell, and Mr. Benedict A. Kausal, IV considered this application in accordance with the provisions of the Air Force Regulation 31-3, and the governing statute, 10 U. S. C. 1552.

/s/______________________
Panel Chairman

Exhibits

A. Applicant's DD Form 149
B. Available Master Personnel Records
C. Advisory Opinion
D. AFBCMR Ltr Forwarding Advisory Opinion
E. Applicant's Responses

DEPARTMENT OF THE AIR FORCE
Wilford Hall Medical Center (AETC)

FROM: WHMC/PSRD
200 Bergquist Drive, Suite 1
Lackland AFB, TX 78236-5300

30 September 1993

SUBJECT: Application for Correction of Medical Records
(Edwards, Hartwell E., 513-30-5804)

TO: Robert E. McDonald, Colonel, USAF, MC
HQ AFMPC/DPMMM
550 C. Street West, Suite 26
Randolph AFB, TX 78150-4728

1. Colonel Gary W. Hinzman asked me to review these medical records and address the specific questions raised by Mrs. Edwards. To begin with, the absence of radiographs available for my review significantly limits this evaluation.

2. The central question centers around a discrepancy in interpretation of a chest radiograph done on 10/2/86 at Malcolm Grow USAF Medical Center. That radiograph was interpreted by Dr. William Whigham as being normal. No lung nodules were described. Copies of this radiograph and other radiographs dated 1/5/88 and 6/8/88 were sent to Dr. Matthew Freedman at Georgetown University Hospital on 18 April 1990. Dr. Freedman interpreted the radiograph of 10/5/86, as "two 1 cm nodular densities projecting over both lower lung fields are consistent with nipple shadows, although films with nipple markers would be valuable in confirming this. These lower lung "nodules" had been seen previously described on chest radiographs dating back to 1978 and were ascribed to overlying nipple shadows. Mrs. Edwards claims that the right lower ling nodule existed prior to her husband's discharge from medical service in 1982 and subsequently developed into a right lower lobe adenosquamous carcinoma. I think this is unlikely for the following reasons:

(1) Dr. Freedman also reviewed two PA chest radiographs dated 1/5/88 in which he described a lobulated density in the right infrahilar region, which was not present on the radiograph of 10/5/86. This seems to indicate that the right infrahilar mass that proved to be adenosquamous carcinoma was not related to the "nodule" he interpreted on examination of 1986. Additionally, the right infrahilar region is not a typical location for overlying nipple shadows to project.

(2) Ms. Edwards also asked whether nodules seen on a chest x-ray should not be seen on all subsequent x-rays. In fact, the nature of lung nodules due to overlying nipple shadows is such that they are often only seen when the patient is imaged in a certain position and therefore often times not reproducible.

3. I hope this clarifies the issue for Mrs. Edwards. There is one other area of possible confusion concerning the dates of the radiographs in question. The chest radiograph report from Malcolm Grow USAF Medical Center is dated 10/2/86, which in civilian notation could be October 2, 1986, or 10 February 1986. Dr. Freedman's report states that the radiograph is dated 10/5/86. In Mrs. Edwards' letter for correction of military records, she states the date of the radiograph in question is 10 February 1986. I believe that this is indeed the same radiograph with some confusion over military vs. civilian notation of dates.

/s/ ____________________

THOMAS M. DYKES, MAJOR, USAF, MC
Chief, Thoracic Radiology Section
Diagnostic Radiology Service

cc: PSR/Col Hinzman

ADDENDUM TO RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY
PROCEEDINGS - MARCH 31, 1997

IN THE MATTER OF: DOCKET NUMBER: 93-02789
HARTWELL E. EDWARDS (DECEASED)
COUNSEL: NONE
513-30-5804 HEARING DESIRED: NO

RESUME OF CASE:

In an application, dated 28 October 1992, the applicant requested that her late husband's records be corrected to show that the x-ray reports for 1978, 1980, 1981, and 1986 be corrected to show a diagnostic error occurred in 1986 that is related to past x-ray findings which show a chronic condition existed in 1978, 1980, and 1981, and that this chronic condition directly relates to the tumor that caused his death in 1988. The Board considered the application and was not persuaded that the record raised issues of error or injustice, which required resolution on the merits; however, the Board chose to deny the application on the basis of timeliness. A complete copy of the Record of Proceedings is attached at Exhibit F.

In a letter, dated 21 October 1994, the applicant requested reconsideration of the appeal; however, on 22 November 1994, she was advised that her request did not meet the criteria for reconsideration by the Board.

In a letter, dated 4 August 1995, the applicant contended that the application was timely filed and requested reconsideration of the appeal. In addition, the applicant amended her request by requesting that her husband's 1986 Radiology Report indicate the presence of "nodular densities/nipple shadows". The applicant also indicated that she was filing suit in the District Court of Maryland on the basis that her rights which are governed by the Constitution, the United States Code Service Court Rules, and the Federal Rules of Civil Procedures were being denied in an unfair manner by the Review Boards. The applicant's complete submission is attached at Exhibit O.

On 11 October 1996, the US District Court for the District of Maryland remanded the application to the Board for further proceedings (Exhibit P).

THE BOARD CONCLUDED THAT:

Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. The Board previously considered the application and was not persuaded that the applicant had been the victim of an error or injustice; however, the Board chose to deny the application on the basis of timeliness. The applicant filed suit in the District Court of Maryland seeking disclosure of documents pursuant to the Freedom of Information Act (FOIA); correction of her late husband's military records to show that a diagnostic error occurred in 1986 that related to past x-ray findings which show a chronic condition existed in 1978, 1980, and 1981, and that this chronic condition directly related to the tumor that caused his death in 1988; and monetary damages from Malcolm Grow Medical Center. The Court dismissed the applicant's claim for monetary benefits and disclosure of documents pursuant to the FOIA. The court found the following: 1) even if the contested 1986 radiology report were corrected to add a reference to the "nodular densities/nipple shadows", it was not at all clear that this would help the applicant in her claim for benefits from the Veteran's Administration, and; 2) in view of the courts ruling in McFarlane that it was in error for the Board to import a reasonableness standard into the date of discovery of the error or injustice for purposes of determining whether an application is timely filed, that the application be remanded to the Board for further proceedings. After thoroughly reviewing the evidence of record and noting the applicant's contentions, we are again not persuaded that an error or injustice exists in this case. The applicant contends that since the chest x-rays taken in 1978, 1980, and 1981, indicated the presence of small nodular densities consistent with nipple shadows, the 1986 Radiology Report must be in error since it does not. The applicant further believes that the reference to the small nodular densities/nipple shadows substantiate that a chronic condition existed prior to her husband's retirement and directly related to his death in 1988. We do not agree. In this respect, we note the following:

a. The 1978, 1980 and 1981 films taken were from the posterior-anterior (PA) view and the presence of small nodular densities consistent with nipple shadows were noted. The applicant believes that these shadows may have been the onset of a chronic condition, which directly related to the carcinoma, which took her husband's life in 1988. However, we note that x-ray films taken from the PA view, unlike the lateral view, superimpose shadows from the direction of the x-ray beam, either posterior or anterior. As such, shadows from nipple may be cast onto the x-ray film. This is why either nipple markers are used on x-ray films taken from the PA view or x-ray films are taken from the lateral view to define where a finding or density is located. In her husband's case, a follow-up x-ray was taken on 4 September 1981, from the PA view with nipple markers and the left nipple marker directly over the possible lesion noted on the prior x-ray.

b. The 1986 Radiology Report indicates that standard x-ray films of the chest in the PA and lateral views showed no abnormality of the heart, lungs, mediastinum, or bony thorax. Approximately two years after her husband's death, the applicant took a copy of the PA view of the 1986 x-ray film to a civilian physician for evaluation. The civilian physician indicated that two nodular densities were consistent with nipple shadows. Based on this, and in view of the 1978, 1980, and 1981 x-rays, the applicant contends that the 1986 Radiology Report should be changed to reflect the presence of small nodulars/nipple shadows. We are not persuaded that a diagnostic error occurred when Malcolm Grow Medical Center read the 1986 x-ray films. To the contrary, we do not find it unusual that Malcolm Grow Medical Center did not note the presence of nodular densities/nipple shadows on the PA view of the 1986 x-ray film since the x-ray film taken on the same date from the lateral view did not reveal the nodular densities/nipple shadows. In view of the above and as noted by the court, we can find no useful purpose in amending the 1986 Radiology Report as requested.

c. Based on the evidence before us, we find no basis to conclude that a chronic condition existed prior to the member's retirement from the Air Force in 1982. Therefore, we are not persuaded that the applicant's husband was unfit at the time of his retirement and do not believe that he should have been retired by reason of physical disability. Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant is notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 29 January 1997, under the provisions of AFI 36-2603:

Mr. Henry C. Saunders, Panel Chairman
Ms. Barbara A. Westgate, Member

Mr. Henry R. Romo, Jr. Member
Mr. Philip E. Horton, Examiner (without vote)

The following documentary evidence was considered:

Exhibit F. Record of Proceedings w/atchs.
Exhibit G. Letter, Applicant, dated 21 Oct. 94.
Exhibit H. Letter, AFBCMR, dated 22 Nov 94.
Exhibit 1. Letter Applicant, dated 25 Nov 94.
Exhibit J. Applicant, dated 28 Feb 95.
Exhibit K. Letter, AFBCMR, dated 28 Mar 95.
Exhibit L. Letter, Applicant, dated 13 Apr 95.
Exhibit M. Letter, Applicant, dated 9 May 95.
Exhibit N. Letter, AFBCMR, dated 22 May 95
Exhibit 0. Letter, Applicant, dated 4 Aug 95.
Exhibit P. Court Order, District Court of Maryland

/s/ ____________________
HENRY C. SAUNDERS
Panel Chairman

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS

Plaintiff,

v. CIVIL ACTION No. DKC-95-3115

DEPARTMENT OF THE
AFBCMR,

Defendant.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, IT IS this 11th day of October, 1996, by the United States District Court for the District of Maryland, ORDERED that:

1. Defendants' motion to dismiss BE, and the same hereby IS, GRANTED in part and DENIED in part; and
2. Plaintiff's FOIA claim and all claims for damages are DISMISSED; and
3. Plaintiff's record correction claim is remanded to AFBCMR for further proceedings; and
4. The Clerk will mail a copy of the foregoing Memorandum Opinion and Order to the Plaintiff and counsel for the Defendant, and close this case.

"s/ ______________________"
Deborah K. Chasanow
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS
Plaintiff,
v. CIVIL ACTION No. DKC-95-3115

DEPARTMENT OF THE
AFBCMR,
Defendant.

MEMORANDUM OPINION

Plaintiff Myra R. Edwards filed a complaint in this court against the Air Force Board for Correction of Military Records ("AFBCMR"), seeking disclosure of certain documents pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. section 552, correction of her late husband's military records, and monetary damages. The Defendant filed a motion to dismiss (Paper no. 11). Plaintiff filed an opposition (Paper no. 12),[1] and Defendant subsequently replied (Paper no. 16). No hearing is deemed necessary, and the court now rules pursuant to Local Rule 105.6.

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[1] The court will treat Plaintiff's "Response to Defendant's Motion to Dismiss Plaintiff's Complaint" as Plaintiff's opposition. Plaintiff has also filed with the court documents entitled "Response for Summary Judgment Based on the Merits of Claim,"; "Plaintiff's Reply Memorandum for Defendant's Response,"; "Request Judicial Review Giving Plaintiff Right to Sue Based on Merits of Claim," and Support of Motion To Dismiss Plaintiff's Complaint, all of which are simply additional oppositions to Defendant's motion to dismiss and therefore are not filed properly under the Local Rules of this court. Because Plaintiff is proceeding pro se, however, the court has nevertheless chosen to give consideration to the arguments contained therein.

I. BACKGROUND

A. STATEMENT OF FACTS

Plaintiff Myra R. Edwards is the widow of Hartwell E. Edwards, a former member of the Air Force. In May 1982, MSgt Edwards retired from active duty. Prior to his retirement, he was given a physical which included a chest – ray in August 1981. He had been given prior chest x-rays in 1979 and 1980. MSgt Edwards was treated in March 1985 for bronchitis, aggravated by his 30 years of smoking, and mild pleuritis. In February 1986, he had a chest x-ray and it was interpreted as normal. In February 1988, MSgt Edwards was diagnosed with lung cancer, and he died as a result of lung cancer on October 11, 1988.

Attempting to establish a service connection in conjunction with a claim to the Veteran's Administration ("VA") for death benefits, Ms. Edwards had three different doctors review her husband's medical records. All felt that the dark spots showing up on his chest x-rays were nipple shadows rather than any sort of pathology. On June 18, 1991, the Board of Veterans' Appeals ruled on Plaintiff's claim for entitlements. The Board found that the fatal lung cancer was not etiologically related to any lung pathology or other pathology present during his service and that she did not subit a well-grounded claim. The Board denied service connection for the cause of death.

By application to the AFBCMR dated October 28, 1992, Ms. Edwards attempted to have certain x-rays and medical diagnoses in MSgt Edwards medical records "corrected," which she thought would, in turn, favorably impact her entitlement to VA benefits. Specifically, Ms. Edwards was concerned that the radiology report accompanying the 1986 chest x-ray made no mention of spots on the lungs which were noted, again as probably being nipple shadows, in a radiology report presented by one of the reviewing doctors in 1990. On her application, Ms. Edwards indicted that the "alleged error or injustice data" was discovered on April 16, 1990, the date of the reviewing doctor's radiology report for the 1986 chest x-ray. The AFBCMR denied the application as untimely filed, in essence holding that she discovered, or reasonably could have discovered the "alleged error or injustice data" well before the date of discovery she asserted, or at least within three years of her husband's death.

On October 21, 1994, Ms. Edwards requested that AFBCMR reconsider their decision. By letter dated November 22, 1994, AFBCMR found that her request did not meet the criteria for reconsideration. The letter further explained that

> "Although your application was denied because of timeliness, the Board also reviewed the merits of your case. The governing statute permits the Board to waive timeliness... in the interest of justice." The Board reviews the merits of untimely applications and, if found to be meritorious, waives timeliness in the interest of justice. In your case, the Board found no error or injustice warranting correction of your late husband's records but elected to decide the case on timeliness".

On November 25, 1994, April 13, 1995, and May 9, 1995, Ms. Edwards submitted requests to the AFBCMR pursuant to FOIA, requesting "all facts that show" and the "documents that state/show" that "[t]he essential medical facts which gave rise to [her] application were known by Myra R. Edwards, long before the asserted date of discovery," and all written documents that support AFBCMR and/or the Review Board's subjective evaluation which denied [her] right to have [her] deceased husbands [sic] 1986 radiology report from Malcolm Grow Medical Center corrected." The Air Force responded to each request, stating that the agency is not required to answer questions, draw conclusions, or render subjective evaluations in response to FOIA requests.

Dissatisfied with the responses provided by the Air Force, Plaintiff filed this action. The Air Force then re-evaluated Plaintiff's request and released two documents which they considered arguably to be responsive to Plaintiff's requests, namely her husband's death certificate and her application to

AFBCMR. The AFBCMR advised Ms. Edwards that there are no other documents responsive to her requests.

B. PLAINTIFF'S CLAIMS

The court has spent a great deal of time attempting to discern exactly what relief Plaintiff is seeking. Examining Plaintiff's complaint in conjunction with all subsequent pleading filed by Plaintiff, it seems clear that Plaintiff seeks: (1) disclosure of documents from AFBCMR relevant to AFBCMR's refusal to correct MSgt Edwards' medical records; (2) correction of MSgt Edwards' medical records; (3) application of the "corrected" medical records to Plaintiff's original claim for benefits before the United States Court of Veterans Appeals; and (4) monetary damages for Malcolm Grow Medical Center's "negligence" in 1986 for failing to make note in MSgt Edwards' medical records of the "nodular densities/nipple shadows" appearing on his chest x-ray.

The court wishes to note at the outset that AFBCMR is the only named defendant in this lawsuit. Therefore, the court can address only those of Plaintiff's claims for which AFBCMR has any responsibility, namely the request for **document disclosure and the request for records correction**. Plaintiff's other claims are beyond this court's jurisdiction and certainly beyond any relief that could be obtained from the AFBCMR. Any claims Plaintiff may be asserting for monetary damages will be dismissed.

II. DISCUSSION

A. STANDARD OF REVIEW

The Defendant has moved to dismiss Plaintiff's complaint. Because the court has considered the affidavits and documents submitted by the Defendant, as well as the voluminous documents submitted by Plaintiff in support of the case, the court will treat Defendant's motion as a motion for summary judgment pursuant to Federal Rule of Civil

Procedure 56. See Fed. R. Civ. P. 12(b).

It is well established that a motion for summary judgment will be granted only if there exists no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56©; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1968); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The moving party bears the burden of showing that there is no genuine issue as to any material fact. Fed. R. Civ. P. 56 (c); Pulliam Inv. Co. v. Cameo Properties, 810 F.2d 1282, 1286 (4th Cir. 1987) (citing Charbonnages de France v. Smith, 597 F.2d 406, 414 (4th Cir. 1979)). If there clearly exist factual issues "that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party," then summary judgment is inappropriate. Anderson, 477 U.S. at 250; see also Pullimam Inv. Co., 810 F.2d at 1286; Morrison v. Nissan Motor Co., 601 F.2d 139, 141 (4th Cir. 1979); Stevens v. Howard D. Johnson Co., 181 F.2d 390, 394 (4th Cir. 1950). In addition, "summary judgment is inappropriate even if merely the inferences to be drawn from the facts are in dispute." United States ex rel.

Milam v. Regents of University of California, 912 F. Supp. 868, 874 (D. Md. 1995); see also Morrison, 601 F.2d at 141 ("Summary judgment under Rule 56, Fed.R.Civ.P. should be granted only where it is perfectly clear that there is no dispute about either the facts of the controversy or the inferences to be drawn from such facts."); Charbonnages, 597 F.2d at 414.

When ruling on a motion for summary judgment, the court must construe the facts alleged in the light most favorable to the party opposing the motion. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962); Gill v. Rollins Protective Servs. Co., 773 F.2d 592, 595 (4th Cir. 1985). A party who bears the burden of proof on a particular claim must factually support each element of his or her claim. "[A] complete failure of proof concerning an essential element... necessarily renders all other facts immaterial." Celotex Corp., 477 U.S. at 323. Thus, on those issues on which the nonmoving party will have the burden of proof, it is his or her responsibility to confront the motion for summary judgment with an affidavit or other similar evidence. Anderson, 477 U.S. at 256.

In Celotex Corp., the Supreme Court stated:

> In cases like the instant one, where the nonmoving party will Bear the burden of proof at trial on a Dispositive issue, a summary judgment motion may properly be made in reliance solely on the "pleading, depositions, answers to interrogatories, and admissions on file." Such a motion, whether or not accompanied by affidavits, will be "made and supported as provided in this rule," and Rule 56(e) therefore requires the nonmoving party to go beyond the pleading and by her own affidavits, or by the "depositions, answers to interrogatories, and admissions on file," designate "specific facts showing that there is a genuine issue for trial."

Celotex Corp., 477 U.S. at 324. However, "'a mere scintilla of evidence is not enough to create a fact issue.'" Barwick v. Celotex Corp., 736 F.2d 946, 958-59 (4th Cir. 1984) (quoting Seaoo v. North Carolina Theaters, Inc., 42 F.R.D. 627, 632 (E.D.N.C. 1966), aff'd, 388 F.2d 987 (4th Cir. 1967), cert. Denied, 390 U.S. 959 (1968)). There must be "sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Anderson, 477 U.S. at 249-50 (citations omitted).

B. THE CLAIMS

1. Plaintiff's Request for Disclosure of Documents

Plaintiff apparently seeks to have this court order AFBCMR to disclose to her any documents supporting AFBCMR's decision to deny her request for a record correction, i.e., any documents, which show that Plaintiff discovered or reasonably could have discovered the facts giving rise to her request more than three years before she filed her request.

While the FOIA grants district courts jurisdiction to enjoin an agency from improperly withholding agency records, see 5 U.S.C. section 552 (a0 (4) (B), a prerequisite to that jurisdiction is that there must be improper agency action under the statute. As the Supreme Court explained in Kissinger v. Reporters Committee for the Freedom of the Press, 445 U.S. 136, 150 (1980:

> Under 5 U.S.C. section 552 (a) (4) (B) federal jurisdiction is dependent upon a showing that an agency has (1) "improperly"; (2) "withheld"; (3) "agency records." Judicial authority to devise remedies and enjoin agencies can only be invoked, under the jurisdiction grant conferred by 552, if the agency has contravened all three components of this obligation.

In this case, the court finds no improper withholding of agency records. The court has before it affidavits from two Air Force employees who assert that the AFBCMR has turned over all documents which arguably could be responsive to Plaintiff's request. AFBCMR sent Plaintiff a copy of her husband's death certificate (showing the date of his death) and a copy of her application to AFBCMR (showing that her application was dated more than four years after her husband's death). Apparently, what Plaintiff is seeking is a document showing that someone told Plaintiff that her husband's medical records were allegedly in error more than three years before she filed her request for a records correction. This request, however, is completely beside the point given the standard by which AFBCMR determined that Plaintiff's request was not timely filed. The important point, as far as AFBCMR was concerned, was not when Plaintiff **actually** became aware of the relevant facts, but rather when Plaintiff **reasonably could have discovered** the relevant facts.[2] AFBCMR apparently made a judgment that she reasonably could have discovered the relevant information at least at the time her husband died of cancer, and unless they reduced this determination to writing, there would be no document responsive to Plaintiff's FOIA request. While AFBCMR could have explained this clearly to Ms. Edwards (and perhaps they should have, as this entire lawsuit then might have been avoided), such an explanation is not required by FOIA. FOIA is a vehicle for obtaining documents, not explanations, from agencies. Because the court finds that there has been no improper withholding of agency records, Plaintiff's demand for further disclosure of documents will be dismissed.

2. Plaintiff's Request for Records Correction

Plaintiff requests that the AFBCMR "correct" her late husband's medical records in light of the 1990 report of a Dr. Freedman.[3] The Court will treat Plaintiff's claim as a request for review of the AFBCMR's decision to deny Plaintiff's request, pursuant to the Administrative Procedure Act ("APA"). See 5 U.S.C. section 702; Guerrero v. Stone, 970 F.2d 626, 628 (9th Cir. 1992) (concluding that Board for Correction of Military Records is an "agency" within the meaning of the APA and its decisions are therefore subject to review by federal courts under arbitrary and capricious standard).

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[2] As will be discussed **infra**; it may have been an error for AFBCMR to use this test for timeliness. Whether or not this was the correct standard to use, however, has no effect on this court's FOIA analysis.

[3] In his report, Dr. Freedman noted that he observed spots over the lungs on MSgt Edwards' x-ray, and these spots were not noted on the radiology report prepared in 1986 when the x-ray was taken. Spots were noted, however, in radiology reports from earlier x-rays, and in each instance the doctors concluded that they were nipple shadows rather than any sort of growth in the lungs. Dr. Freedman also expressed the opinion that the spots on the 1986 film were nipple shadows. Therefore, even if the radiology report for 1986 were "corrected" to add a reference to these spots believed to be nipple shadows, it is not at all clear to the court that this would help Plaintiff's claim for benefits from

the Veteran's Administration, i.e., the "correction" would seem to do nothing to show a service connection for MSgt. Edwards' death. Mrs. Edwards is adamant, however, that she wants the records corrected to reflect Dr. Freedman's findings.

AFBCMR concluded that Plaintiff's request for a record correction was not timely because she did not file it within three years after the alleged error or injustice was discovered, or reasonably could have been discovered, as AFBCMR asserts is required by 10 U.S.C. section 1552 and Air Force Regulation 31-3. This very issue was addressed, however, in McFarlane v. Secretary of the Air Force, 867 F. Supp. 409 (E.D. Va. 1994). In McFarlane, Judge Ellis held that it was error for the AFBCMR to import a reasonableness standard into the date of discovery of the error or injustice for purposes of determining whether an application is timely filed. 867 F. Supp. At 411. The Court explained:

> [The AFBCMR] contends that the proper inquiry for time bar purposes is when the alleged error or injustice was **discovered or reasonably could have been discovered**.
>
> ...
>
> Section 1552(b) permits correction of a military record if an application is made "within three years after [the applicant] discovers the error or injustice." The plain language of this statutory provision indicates that the limitations period begins to run upon the applicant's **actual** discovery of the error or injustice. Nowhere does the statutory language suggest that the date of discovery should turn on when a **reasonable** person, rather than the applicant herself, would have found the mistake... Therefore, it was contrary to law for the [AFBCMR] to import a "reasonable person" test into section 1552(b), and the statute of limitations on Ms. McFarlane's claim runs only from the time that she actually discovered that she was receiving a reduced annuity.

Id. at 411-12 (emphasis in original) (footnote omitted).

In the instant case, Ms. Edwards asserts that she discovered the alleged error in April 1990. She filed her request with AFBCMR in October 1992, and AFBCMR nevertheless ruled that her application was untimely. Therefore, in light of Judge Ellis' ruling in McFarlane, this matter will be remanded to AFBCMR for further proceedings.[4]

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[4] While AFBCMR asserts that it also examined the merits of Ms. Edwards' request and found that no correction was warranted, AFBCMR chose to rest its denial on untimeliness. Furthermore, AFBCMR articulated no reason why Ms. Edwards' request was meritless, and this court therefore has no basis for reviewing this determination.

III. CONCLUSION

For the foregoing reasons, Plaintiff's FOIA claim is DISMISSED. Plaintiff's claim concerning her request for a records correction is remanded to AFBCMR for further proceedings. Plaintiff's other claims, including all claims for damages, are DISMISSED.

"/s/ ______________________"
Deborah K. Chasanow
United States District Judge

-DEPARTMENT OF VETERANS AFFAIRS-RATING DECISION

---

1. **VETERAN'S INITIALS AND SURNAME**	2. **VETERANS SOCIAL SECURITY NUMBER**
H E EDWARDS	513-30-5804
3. **VETERANS FILE NUMBER**	4. **DATE OF THIS RATING**
513-30-5804	06/15/94

---

5. **NARRATIVE:**

ISSUE:

1. Service connection for the cause of the veteran's death.

EVIDENCE:

Service medical records
Reports of treatment from post service
Veteran's death certificate

DECISION:

1. Service connection for the cause of the veteran's death is denied.

REASON AND BASES:

The death of a veteran will be considered as having been due to a service connected disability when the evidence shows that one or more service connected disabilities was the primary cause of death, or a contributory cause of death.

A service connected disability will be considered the primary cause of death when such disability, singly, or jointly with some other condition was the immediate or underlying cause of death.

Contributory cause of death is defined as a condition, which is not related to the primary cause of death, but contributed materially to the death of the veteran. The death certificate shows cause of death certificate shows the cause of death as large cell carcinoma of the lung. Under the authority granted by the Agent Orange Act of 1991, the VA has determined that presumption of service connection based on exposure to herbicides used in Vietnam is not warranted for.

VA has also determined that a presumption of service connection on exposure to herbicides used in Vietnam is not warranted for any other condition than for those, which VA has found a positive association between the condition and such exposure.

VA has determined that a positive association exists between exposure to herbicides and the subsequent development of the following seven conditions: chloracne, non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea trada, multiple myeloma, and cancers of the lung, bronchus, larynx and trachea.

However, while instructions have been given for processing of claims for the first three conditions shown, we are still awaiting instructions concerning effective dated and so on in processing the other conditions cited. Final decision is therefore deferred at this time based on claim Agent Orange exposure.

In addition, while there has been a General Counsel Opinion concerning claims for disabilities due to smoking, we have instructions to defer any decisions pending instructions for the processing of those claims. Therefore, final action on claim on this basis is also deferred.

Review of the record does not indicate the existence of asbestos lung disease. While we recognize that in a veteran with in-service exposure to asbestos develops lung disease, subsequent development of a lung cancer would be due to the asbestos. However, in this case there is no evidence to show asbestos disease of the lungs.

1120 Windemere Court
Fort Washington, MD 20744
20 July 1994

Executive Director
AFBCMR
2535 Command Drive
EE Wing 3rd Floor
Andrews AFB, MD 20331-7002

Reference: CASE – 01 AFBCMR 93-02789
SSN # 513-30-5804 HARTWELL E.
EDWARDS, USAF DECEASED

Subject: MEDICAL RECORDS CORRECTION

CERTIFIED REQUEST – RETURN RECEIPT
REQUESTED

TO AFBCMR,

Some months back, I requested a medical records correction for my husband's 1986 chest x-ray report. The chest x-ray report from Malcolm Grow Medical Center for 1986 states: His chest is normal. I believe this finding, as currently written, has lead medical doctors to believe; each nodular density found on past chest x-ray reports and believed to be nipple shadows while serving on active duty, represent disconnected occurrences of shadows that did not relate to the cancer which caused his death 5 years after retirement.

I requested a medical records correction because, after having each of my husband's available chest x-rays read by an independent doctor; the independent doctor was in agreement with each finding from Malcolm Grow, except for, the one 1986 chest x-ray report. Doctor Freedman from Georgetown University hospital found, the 1986 chest x-ray showed: The existence of two nodular densities. Now the conclusion could be: The two nodular densities found by

Doctor Freedman in 1986 is representative or related to the nodular densities found by past doctors from Malcolm Grow who opined these densities as being nipple shadows. I believe the longevity of these shadows is representative of a medical problem that may have had an earlier origin.

When my husband's cancer was finally diagnosed in 1987, the medical doctor's discovered the existence of a nodular density in the form of a shadow, however, this particular density was actually the cancer which caused death.

I don't believe the nodular densities of the past from (1978 – 1981) opined as nipple shadows was then the cancer that later caused his death. However, I do believe each earlier nodular density or nipple shadow is representative of a pre-existing condition, which did lead to the development of lung cancer, which caused his death.

Since I have been unable to medically connect the facts concerning my husband's lung cancer, I thought it best to request a medical records correction. Enclosed is a copy of the Department of Veteran's Affairs Rating Decision showing as of 15 June 1994 my request for consideration of a service connected death has been denied. The reason for denial is based on evidence found in his service medical records, reports of treatment from post service, and the Veteran's death certificate. As you can see, I will never receive Benefit of the Doubt, for the lung cancer that caused my husband's death based on the current information found in my deceased husband's medical records.

I believe the 1986 chest x-ray report from Malcolm Grow Medical Center was either incorrectly read or the data for the reading was incorrectly put in his medical records. As I see the facts before me, the reason for the error is of little importance. Before I can appeal this denial, I need to have his medical records corrected. Once the medical records are corrected my new claim for a service connected death can be related to the corrected information found in his medical records. Past reports given to the VA for my claim is based on reports I received form various medical doctors reviewing the information as it is currently written in my husband's medical records.

I have 60 days for the date of the letter received from the VA, which was dated, 12 July 1994 to request reconsideration of my most recent denial dated 15 June 1994.

Hopefully, the Medical Corrections Board will have reached a conclusion for my request for having my husband's medical records corrected; before, the designated time for my appeal to the Veterans Administration runs out.

Sincerely,

Myra R. Edwards

Myra R. Edwards

Encl (1)
Rating Decision
VA Form 21-6796

1120 Windemere Court
Fort Washington, MD 20744
13 April 1995

AFBCMR
1535 Command Drive
EE Wing 3^{rd} Floor
Andrews AFB, MD 20331-7002

Department of the Air Force
Office of the Assistant Secretary
Executive Director
Air Force Board for Correction
Of Military Records
Washington, DC 20301-1400

Department of the Air Force
11 MSS/IMS (FOIA)
1000 Air Force Pentagon
Washington, DC 20330-1000

Subject: Freedom of Information Act (FOIA) Request for Records Correction of Hartwell E. Edwards, deceased

To the above addressees,

This letter is being sent under the Freedom of Information Act, to request a copy of all documents AFBCMR and or the Military Board of Records Correction used which show: "The essential medical facts which gave rise to my application were known by Myra R. Edwards before the asserted date of discovery.

Enclosed is a copy of the letter I received from the Executive Director, Air Force Board of Corrections of Military Records. This letter state in paragraph 3: Concerning your request, please be advised that FOIA does not require agencies to answer questions, drew conclusions, nor otherwise render subjective evaluations in response to a request.

Please note, this request under the Freedom of Information Act is for documents that state/show: "The essential medical facts which gave rise to my application were known by Myra R. Edwards, long before the asserted date of discovery; and that my request does not relate to questions, I would ask of AFBCMR, or of conclusions that may be drawn, or of evaluations that may be drawn from AFBCMR's statements. What I am asking for under the Freedom of Information Act is as follows: I have asked to receive a copy of the facts/documents that support AFBCMR's denial decision for not correcting my deceased husband's 1986 radiology report from Malcolm Grow Medical Center.

There is the possibility that the documents the Board of Corrections used to show: "The essential medical facts that gave rise to my application and were known by Myra R. Edwards, long before the asserted date of discovery needs clarification.

However, I am unable to clarify and/or defend my position on this issue; because, I have not received copies of the referenced documents that AFBCMR say are supportive of facts that show, I had prior knowledge of the asserted facts before April 1990.

I would like to reconcile the facts AFBCMR is using, as the basis for denying correction of my husband's medical records; but I cannot reconcile these facts, if my rights under the Freedom of Information Act are being denied. Before I can defend my rights on this issue, I must receive copies of all referenced documents that show, I had prior knowledge of the asserted medical facts before, I received Dr. Freedman's 1990 radiology report for duplicated 1986 chest x-ray film from Malcolm Grow Medical Center.

Under the law, I have the right to protest a finding by the government and I may wish to exercise this right; but I cannot defend the unknown. Therefore, it is important for me to know or to receive a copy of the facts that support

AFBCMR's denial decision. Especially when the basis for correction of my husband's medical records is based on facts that show AFBCMR is stating: "The essential medical facts which gave rise to my application were known by Myra R. Edwards, long before the asserted date of discovery". I see AFBCMR's position/finding for their denial decision and refusal for giving me a copy of the requested documents that support their decision, as being, an unjustifiable act which directly denies my rights on this issue.

I am re-submitting my request under the Freedom of Information Act, for a copy of all documents AFBCMR has on file that support their denial decision and which shows: "The essential medical facts which gave rise to my application were known by Myra R. Edwards, long before the asserted date of discovery."

Sincerely,

Myra R. Edwards

Myra R. Edwards

Encl
as

DEPARTMENT OF THE AIR FORCE
Washington DC 20330-1000

Office of the Assistant Secretary
AFBCMR
1535 Command Dr, EE Wing, 3rd Floor
Andrews AFB, MD 20331 - 7002

Nov 22, 1994

Ms. Myra R. Edwards
1120 Windemere Court
Fort Washington, MD 20744

Dear Ms. Edwards,

This is in response to your October 21, 1994 request for reconsideration of your application for correction of your late husband's military records, AFBCMR Docket Number 93-02789.

In your application to the Air Force Board for Correction of Military Records (AFBCMR), dated October 28, 1992, you asserted a date of discovery of April 16, 1990, which would if correct, make the application timely; however, the essential facts which gave rise to the application were known by you long before the asserted date of discovery. Knowledge of those facts constituted the date of discovery and the beginning of the three-year period for filing. Thus the AFBCMR denied your application as untimely.

Although your application was denied because of timeliness, the Board also reviewed the merits of your case. The governing statute permits the Board to waive timeliness if "...in the interest of justice." The Board reviews the merits of untimely applications and, if found to be meritorious, waives timeliness in the interest of justice. In your case, the Board fond no error or injustice warranting correction of your late husband's records but elected to decide the case on timeliness.

We have examined your request and we find that it does not meet the criterion for reconsideration by the Board. Reconsideration is provided only where newly discovered relevant evidence is presented which was not reasonably available when the application was submitted. The reiteration of facts previously addressed by the Board, uncorroborated personal observations, or additional arguments on the evidence of record are not adequate grounds for reopening a case.

In view of this finding, favorable action on your request is not possible.

Sincerely,

s/ ____________________________"
MACK M. BURTON
Acting Executive Director
Air Force Board for Correction
Of Military Records

9702 New Orchard Drive
Upper Marlboro, MD 20772
3 August 1993

SAF/MIBR
550 C Street West
Suite 40
Randolph AFB, TX 78150-4742

Reference: Hartwell E. Edwards, request for military medical records correction, original request date 28 Oct 92, social security number 513-30-5804.

To the Office of the Assistant Secretary,

This letter is sent as a follow-up to my original request dated 28 October that was received 9 November 1992 by your office. Also to let you know where Hartwell E. Edwards' chest x-ray film resides.

I do not know whether or not the Air Force Records Review Board will want to review the actual 1986 chest x-ray film of Hartwell E. Edwards which I, Myra R. Edwards found contradicts Malcolm Grow Medical Center's original radiology report. I took the duplicated 1986 chest x-ray film from Malcolm Grow Medical Center in 1990 to the radiology department at Georgetown University Hospital. The radiology report from Georgetown reveals nipple shadows were still present in 1986, even though Malcolm Grow failed to discover this fact on the original 1986 radiology report. The 1990 radiology report from Georgetown for duplicated 1986 x-ray film from Malcolm Grow states: Two 1 cm nodular densities projected over both lower lung fields are consistent with nipple shadows.

When I studied each radiology report for the years 1978 through 1982, I discovered the doctors during this time period also reported finding nodular densities projected over the left or right region or both lower lungs fields. With finding, that is consistent with nipple shadows while my husband was still on active duty. Therefore, as stated in my original medical records correction request **to resolve these two conflicting chest x-ray reports**: I am seeking answers that relate to the significance of Dr. Freedman's 1990 radiology report for Malcolm Grows duplicated 1986 x-ray film.

The report I received from Dr. Ruxer in his letter dated 27 September 1989 states: He had difficulty connecting those findings described in 1978 and 1981 with the later abnormalities on the chest x-ray noted in late 1987 and early 1988. Dr. Ruxer continues by stating: There is in the clinical record a chest x-ray report dated 10 February 1986 which reads, "Standard radiograph of the chest in the frontal and lateral projection showed no abnormality of the heart, lungs, mediastinum, or bony thorax. Impression: Normal chest."

Should the Air Force Board of Corrections need to review the original chest x-ray film for 1986, please send a written request to the Legal Office at Malcolm Grow Medical Center in Maryland. The Veterans' Administration has my husbands written medical records and the written medical reports I received from other medical sources.

I am not sure how long my husband's chest x-ray film will continue to be available for your review. When I began my case in October 1988, I was told all x-ray film is destroyed in accordance to regulations after five years. My original claim for Dependency Indemnity Compensation with the Veterans' Administration will be five years old in October or November 1993. **Therefore it maybe necessary for you to formally request all chest x-ray film be kept for a period longer than the mandated five-year time frame.**

Sincerely,

Myra R. Edwards

Myra R. Edwards

1120 Windemere Court
Fort Washington, MD 20744
18 December 1995

Secretary of the Air Force
THRU: 11 MSS/IMS (FOIA)
1000 Air Force Pentagon
Washington, DC 20330-1000

To the Secretary of the Air Force,

This letter is sent to appeal 11 MSS/IMS decision for nondisclosure of written reports which show: "The essential facts which gave rise to my application were known by Myra R. Edwards, long before the asserted date of discovery", and for AFBCMR's refusal to correct my husband's 1986 radiology report. I received a copy of his official medical records to find in 1990, the written 1986 radiology report from Malcolm Grow Medical Center is in error. The substantial evidence which proves a error exists on my husband's 1986 radiology report from Malcolm Grow Medical Center is based on copies of the radiology report I received from Georgetown University Hospital's Radiology Department who in 1990 read duplicated 1986 film supplied to them from Malcolm Grow Medical Center. Doctor Matthew T. Freedman from Georgetown University Hospital read duplicated radiology film in 1990 to find: Two 1 cm nodular densities projected over both lower lung fields are consistent with nipple shadows, although film with nipple markers would be valuable in confirming this. Thus, doctor Freedman's finding show in 1986, Malcolm Grow omitted a finding for nodular densities that may have been diagnosed as nipple shadows on the original 1986 medical report.

Under the law, a undetermined medical finding such as reported on Doctor Freedman radiology report allows the benefit of the doubt to fall in my favor especially when you (as the medical professional) evaluate the original 1986 radiology report; and upon evaluation (you as the medical professional) find the original 1986 radiology report from Malcolm Grow Medical Center omitted medical facts about two nodular densities that may or may not be nipple shadows. Upon discovery that a undetermined medical fact may exist, the medical professionals were obligated under law, to evaluate the original 1986 radiology film for a determination of, whether or not an error exists on the original finding.

To date, the original radiology film remains in the possession of Malcolm Grow Medical Center, which makes it easy to prove, whether or not, in 1986, a material medical mistake was made on the original 1986 radiology report. Thus, litigation of this issue may show in 1986 Malcolm Grow omitted a finding for nodular densities that may or may not relate to nipple shadows.

It is my belief that the Government would want to know whether or not the 1986 radiology report from Malcolm Grow Medical Center is in error; or if Georgetown University Hospital's 1986 medical finding is in error, because the Government should want to ensure the 1986 radiology report from Malcolm Grow accurately describes what was found on the original 1986 radiology film.

In 1986 when my husband was alive, Malcolm Grow Medical Center gave him a chest x-ray, which reveals: the chests in the frontal and lateral projections show no abnormality of the heart, lungs; medisstinum or bony thorax. Normal chest.

Then in 1987 and 1988, Malcolm Grow Medical Center found his chest to be congestive and the density in the retro cardiac region started appearing clearer. Prior to this finding for the years 1980 through 1981) Malcolm Grow found his chest to be congestive with the suggestion of rounded nodular densities. In 1981 the nodular densities within the chest cavity were believed to be an artifact. The problem with Malcolm Grows 1986 radiology report is: The medical record for this year does not indicate Malcolm Grow was aware of nodular densities that may or may not be nipple shadows.

The medical facts for radiology reports for 1986 through 1988 can be found in Hartwell E. Edwards official Medical records from Malcolm Grow Medical Center; please note: his medical records have been released to AFBCMR.

October 28, 1992, I lawfully requested a medical records correction of my husband's 1986 radiology report under the provisions of Title 10 of the U.S. Code § 1552. I based this request on Doctor Matthew Freedman's 1990 radiology report for duplicated 1986 radiology film. After making this lawful request, AFBCMR denied my right to have my husband's medical records corrected by stating: The essential facts which gave rise to the application were known by you, long before the asserted date of discovery. Therefore, I sent a FOIA request to discover what facts were known by Myra R. Edwards, long before the asserted date of discovery.

This got me nowhere, because 11 MSS/IMS (FOIA) has continued to deny my right to this information by stating: "we are not required to answer questions under the FOIA.

AFBCMR has denied my rights on the issue of correcting my husband's 1986 radiology report from Malcolm Grow Medical Center, even though the law provides under 5 U. S. C. S. § 552a, 42. "Right to amend incorrect records: Duty to amend incorrect record is not met merely by agency's keeping copy of subject's rebuttal together with allegedly false record; although act does not require perfect accuracy, agency has duty to determine which version of events are accurate, and is not free to include its agent's report in files without concluding that it is accurate. Doe v. United States (1986) 251 App DC 54, 781 F2d 907, reh gr, vacated on other grounds, en banc 252 App DC 41, 786 F2d 1203, on reh 261 App DC 206, 821 F2d 694.

5 U. S. C. S. § 552a(d)(2) permits individuals to request factual amendments he believes warranted in his records maintained in system of records but does not ordinarily permit correction of judgmental decision such as efficiency

reports, selection and promotion board reports. G-LGL ltr 5263,21 Aug 80, CGLB, Dec 1981.

Since I could not get AFBCMR to disclose information relative to my request, I presented the facts of this case to: The United States District Court For The District Of Maryland. Please note: Materials kept in private files which are never circulated and which are not under agency control and which can be discarded at will in writer's sole discretion are personal property of authors and government is not obligated to produce or account for them under Freedom of Information Act (5 U. S. C. S. § 552) or Privacy Act (5 U. S. C. S. § 552a). Kalmin v. Department of Navy (1985, DC Dist Col) 605 F Supp 1492.

For example, to challenge denial of benefits, SSA may, without individual's consent, pursuant to routine use exception of Privacy (5 U. S. C. S. § 552a(b)(3)), disclose individual's records to attorney representing SSA in action; one purpose for which SSA records are collected is to determine amount of benefits to which entitled, if any, and if court is to determine whether denial of benefits, in whole or in part, was correct, it must be able to review records; thus, disclosure of individual's records is compatible with purpose for which they are collected. Lemasters v. Thomson (1993, ND III) 1993 US Dist LEXIS 7513.

In conclusion: AF Pamphlet 31-5 item # 4. "How to Support Your Request states";

a. The AFBCMR will correct your military records only if you can prove by substantial evidence that you are the victim of error or injustice. You do this by providing evidence, such as signed statements from you and other witnesses or copies of records that support your case. It is not enough to provide the names of witnesses to obtain statements. You should contact your witnesses to get their signed statements, and submit their statements with your request.

It is my belief that, I have complied with the three year time period for submission for having my husband's 1986 chest x-ray corrected. And that under law, I have complied with the requirements of AF Pamphlet 31-5 by submitting doctor

Freedman's 1990 radiology report which warrants the correction of my husband's medical records.

Thus, it is my belief that AFBCMR has refused under Title 10 U. S. C. § 1552 to correct my husband's 1986 chest x-ray report from Malcolm Grow Medical Center, and AFBCMR has refused to disclose medical reports compatible with the purpose for which these facts were collected which through court litigation may show; my rights under law are in violation for a just and equitable decision on the issue. As my husband's 1986 chest x-ray report remains in error and this error may be shown to have affected medical opinions for the evaluation of, whether or not, while in the military; Hartwell E. Edwards developed a pre-existing condition which may have lead to the development of lung cancer (large cell carcinoma) in 1987 which is the year Malcolm Grow Medical Center diagnosed his medical problems.

Encl

Department of the Air Force
11th Wing letter, dated 14 Dec 95
with copies of original enclosures

Sincerely,

Myra R. Edwards

Myra R. Edwards

CC:

Office of the Attorney General for Maryland
Attn: Lynn Battaglia

Office of the Attorney General
Attn: Janet Reno

AFBCMR

POINTS OF AUTHORITY

Provisions of Title 10 of the U.S. Code § 1552 5 U. S. C. S. § 552a, 42

Doe v. United States (1986) 251 App DC 54, 781 F2d 907, reh gr, vacated on other grounds, en banc 252 App DC 41, 786 F2d 1203, on reh 261 App DC 206, 821 F2d 694

5 U. S.C.S. § 552a(d)(2)

Selection and promotion board reports. G-LGL ltr 5263,21 Aug 80, CGLB, Dec 1981

Freedom of Information Act (5 U. S. C. S § 552)

Privacy Act (5 U. S. C. S. § 552a)

Kalmin v. Department of Navy (1985, DC Dist Col) 605 F Supp 1492

5 U. S. C. S. § 552a(b)(3)

Lemasters v. Thomson (1993, ND Ill) 1993 US Dist LEXIS 7513

AF Pamphlet 31-5 item # 4

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 18th day of December 1995, this letter was sent to: Secretary of the Air Force, THRU 11 MSS/IMS (FOIA) by certified mail, (article # Z 754 665 802) and that copies of this letter are being sent by first class mail to: Attorney General Lynn Battaglia; Attorney General Janet Reno and AFBCMR.

Myra R Edwards

MYRA R. EDWARDS

1120 Windemere Court
Fort Washington, MD 20744
4 August 1995

CERTIFIED REQUEST - RETURN RECEIPT REQUESTED

SUBJECT: Official Notification To inform Air Force Board Of Corrections For Military Records (AFBCMR) That A Lawsuit Shall Be Forthcoming, For Non-Response To My Request For Documents, Under The Freedom Of Information Act, After Receiving AFBCMR's Denial Decision for A Medical Records Correction

Reference: AFBCMR Docket Number 93-02789

AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, MD 20331-7002

To AFBCMR,

The above lawsuit shall be based on facts found in AFBCMR's letter dated 22 Nov 94 to Myra R. Edwards. Paragraph 2 of this letter states: "In your application to the Air Force Board for Corrections of Military Records (AFBCMR), dated 28, October 1992, you asserted a date of discovery of April 16, 1990, which would, if correct make your application timely; however, the essential facts which gave rise to the application were known by you long before the asserted date of discovery".

After receiving this letter from AFBCMR, I sent a Freedom of Information Act (FOIA) request for specific documents which confirms, AFBCMR's statement: 16 April 1990 was **not** the date I, Myra R. Edwards discovered, **"Malcolm Grow Medical Center's error** which omitted material medical facts **not found on Malcolm Grows original 1986 radiology report.** To date, 4 August 1995 AFBCMR has not under law sent the requested documents per my request for their denial decision.

Paragraph 3 of AFBCMR's letter states: Although your application was denied because of timeliness, the Board also reviewed the merits of your case. The governing statute permits the Board to waive timeliness if "... in the interest of justice...," The Board reviews the merits of untimely applications and if found to be meritorious, waives timeliness in the interest of justice warranting correction of your late husbands' records but elected to decide the case on timeliness.

After receiving this letter for the above statements: Under the Freedom of Information Act, I requested specific documents which confirms my application for correction or my husband's 1986 radiology report was not filed by me in a timely manner. To date, 4 August 1995, AFBCMR has not responded by sending the requested documents per this request. I also asked AFBCMR under the Freedom of information Act to send specific documents which confirms "Malcolm Grows 1986 radiology report was **not found** to **be** in **error and which supports AFBCMR's denial statement shoving, no error or injustice warranting correction of your late husband's records was found".** To date, 4 August 1995, AFBCMR has not responded by sending the requested documents per this request.

My request for my late husband's medical records correction is based on Doctor Freedman's medical finding; therefore, if AFBCMR found Malcolm Grows original 1986 radiology report was not in error, under law, I am due a updated medical report which confirms no error or injustice was found giving the date of the new radiology reading. To date, 4 August 1995, under law my rights for receiving a medical report that upholds this portion of AFBCMR's denial decision has never been given.

AFBCMR's denial statement found in their letter dated 22 Nov

1994 in paragraph 3 states: "Although your application was denied because of timeliness", and.... "the Board found no error or injustice warranting correction of your husband's records but elected to decide the case on timeliness. Since correction of my husband's radiology report was denied in part by the aforementioned statement, I am due, specific documents, which confirms, I did not submit my application for a medical records correction in a timely manner. I am also due specific documents, which confirm the Board found no error or injustice warranting correction of my late husband's records. My request for these specific documents were requested under the Freedom of Information Act and even though I lawfully asked for the documents, which support AFBCMR's denial decision; to date 4 August 1995, AFBCMR **has** not responded by sending the requested documents per this request.

Paragraph 4 of AFBCMR's letter states: "We have examined your request and we find that it does not meet the criterion for reconsideration. Under the law I am due specific information which either explains or refers me to the **laws,** which govern my request for a medical records correction.

Under law I am due specific information that governs the criterion of medical facts, I submitted to AFBCMR after receiving Doctor Matthew Freedman's 1990 radiology report; however to date, 4 August 1995, AFBCMR has denied this right.

Paragraph 4 continues by stating: Reconsideration is provided only where newly discovered relevant evidence is presented which was not reasonably available when the application was submitted. Under law, I am still due specific documents and information that is relevant to my husband's 1986 chest x-ray report. The specific documents per my Freedom of Information request should come from Malcolm Grow Medical Center, showing Doctor Matthew Freedman's 1990 radiology finding for chest x-ray film duplicated by Malcolm Grow is in error. In 1990 Malcolm

Grow duplicated my husband's 1986 and 1988 chest x-ray film, these film were read by a independent source in 1990 who found nodular densities/nipple shadows on the 1990 radiology reading for my husband's original 1986 chest x-ray film. Malcolm Grows original 1986 chest x-ray report omitted a finding for nodular densities/nipple shadows.

My original claim before the Veteran's Administration was denied after reports from various medical doctors who used Malcolm Grows medical finding for a determination on whether or not a pre-existing condition was present while in service. After receiving Doctor Freedman's radiology report, I gave this report to the Veteran's Administration. However, no medical doctor evaluated the finding so Doctor Freedman's 1990 radiology finding, still needs to be evaluated by a qualified medical doctor. AFBCMR's refusal to consider the relevance of this finding constitutes a denial of my rights for disputed medical facts. Also, AFBCMR is in violation of my constitutional rights when they refused to send specific documents that support their denial decision for the disputed 1986 chest x-ray report from Malcolm Grow Medical Center.

Since AFBCMR has denied my rights under law for consideration of facts discovered by Doctor Matthew Freedman for his 1990 radiology finding, and they are denying my rights to receive specific documents which confirms AFBCMR's denial decision; I a sending this certified letter dated 4 August 1995 to AFBCMR at Andrews AFB, MD; Department of the Air Force, Review Boards Office at Randolph Air Force Base, Texas; and AFBCMR at the Pentagon, Washington D.C., to let all concerned parties know, this letter serves as my notice to the government to inform you of a possible lawsuit.

The bases of the lawsuit shall be: My rights which are governed by the United States Code Annotated Constitution of the United States and United States Code Service Court Rules, Federal Rules of Civil Procedures are being denied in a unfair manner by the Review Boards; who to this date, have refused to release specific documents under the Freedom of Information Act which under law should support their denial decision. The specific documents being requested are documents that should be available to the public and should confirm AFBCMR's denial decision as outlined by AFBCMR letters dated 22 November 1994 and 28 March 1995.

Encl (s)
1. Dept of AF ltr. dtd. 12 Apr 93
2. Dept of AF ltr. dtd. 08 Nov 93

Sincerely,
Myra R. Edwards
Myra R. Edwards

CC:
Department of the Air Force
Review Boards Office
Randolph Air Force Base, Texas 78150- 4747

AFBCMR
1661 Air Force Pentagon
Washington, D.C. 20330-1661

Certified Request - Return Receipt Requested (Z 332 540 026) Sent to Department of the Air Force Review Boards Office at Randolph Air Force Base, Texas

Certified Request - Return Receipt Requested (Z 332 540 027) Sent to AFBCMR at 1661 Air Force Pentagon, Washington, D.C. 20330-1661

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND

Myra R. Edwards
1120 Windemere Court
Fort Washington, N4D 20744

Civil No. DKC-95-3115

vs.

Department of the Air Force
AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, MD 20331-7002

GROUNDS FOR SUIT:

28 U.S. C. section 2401 states,
Time for commencing action against United States –

(a) Except as provided by the Contract Disputes Act of 1978, every civil action commenced against the United States shall be barred unless the complaint is filed **within** six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the **claim** accrues may be commenced within three years after the disability ceases.

(b) A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency **within** two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

The last correspondence I received from the Department of Air Force Board of Corrections for Military Records (AFBCMR) concerning denial of my Freedom of Information Act (FOIA) request was dated May 22, 1995. After receiving this letter, I sent AFBCMR notification of a possible Civil suit by certified mail, return receipt requested. My records indicate AFBCN4R received official notice of the Civil suit on August 7, 1995.

Under law, AFBCMR must provide reports/documents/information, which shows or supports the following medical fact: In 1986 Malcolm Grow Medical Center did not error on the original 1986 radiology report in question. Under law, AFBCMR is required to provide written justification in support of their denial decision.

Under the Freedom of Information Act, I am due a copy of the medical report, which confirms or denies Malcolm Grow Medical Center's original 1986 radiology report is or is not in error. Failure of the Government to provide required medical information about a case in review-, for which a denial decision has been rendered violates my rights as Guaranteed under 5 U.S. C. S. section 552 of the Freedom of Information Act and is review able by the Courts under 5 U. S. C. S. Section 706.

AFBCMR's letter dated November 22, 1994, states-, "In your application to the Air Force Board for Correction of Military Records (AFBCMR) dated October 28, 1992; you asserted a date of discovery of April 16, 1990, which would if correct, make the application timely, however, the essential facts which gave rise to the application were known by you (meaning Myra R. Edwards) long before the asserted date of discovery. Knowledge of those facts constituted the date of discovery and the beginning of the three-year period for filing.

In my certified letters to AFBCMR dated 24 May 1995 and 4 August 1995, 1 stated: My request for a medical records correction is based on Dr. Matthew Freedman's, 1990 radiology report for duplicated 1986 chest x-ray film from Malcolm Grow Medical Center.

I am not a medical physician, which means, prior to receiving Doctor Freedman's medical report; I had no knowledge of Malcolm Grow Medical Center's material error on the 1986 radiology report. Therefore, it is imperative for me to find out what AFBCMR meant when they state: the essential facts were know my you long before the asserted date of discovery.

Under the Rules of Procedure, Rule 56, n 223 - Personal Knowledge states,

> Where affiant alleges facts that suggest he was in position to have had personal knowledge of questions in dispute, and affiant alleges that he was personally familiar with events surrounding disputed questions, allegations of affidavit are credible in absence of substantiation by opposing party that affiant did not have personal knowledge of facts which were averred. Ondis v. Barrows (1976, Cal RI) 538 F2d 904, CCH Fed Secur L Rep section 95800.

FRCP Rule 56, n 224 the Court found under Information and belief that, Affidavit submitted on information and belief based upon records and files in possession of United States Attorney were not based upon personal knowledge as required by Rule 56(e). Dean Constr. Co v. Simmonetta Concrete Constr. Corp. (1965, SD NY) 3 7 FRD 242, 9 FR Serv 2d 56c.4 1, Case 4.

In my case, I asked AFBCMR to disclose all information, which showed. I had knowledge of medical facts prior to the asserted date; which revealed Malcolm Grows' Medical Center's error. With record of proceedings showing this information is continually being denied.

AFBCMR's letter dated Nov 22, 1995, states, FOIA does not require agencies to answer question, draw conclusion, nor otherwise render subjective evaluations in response to a request. My request to AFBCMR under the Freedom of Information Act has continually been for **medical records, which they should have in support of their denial decision**. The facts of this case show: AFBCMR has not released any information in support of their denial decision or which supports or denies Doctor Freedman's 1990 radiology report for duplicated film. As, Doctor Freedman's 1990 radiology report revealed in 1986, **Malcolm Grow Medical Center made a material medical error on my husband's original radiology report**.

GRIEVANCE:

The Air Force Board of Corrections for Military Records (AFBCMR) denied my rights under the "Freedom of Information Act" to receive medical reports and or written documents that should be available to the public upon request. Under law, I am entitled to receive a copy of all medical documents and/or reports the Board has or used to justify not correcting my husband's original 1986 radiology report which was found by Doctor Freedman's 1990 radiology report to be in error.

My application for a military records correction was received by AFBCMR on 9 Nov 92. AFBCMR Docket Number 93-02789. This request was submitted under the Provisions of Title 10, of the U.S. Code, Section 1552. The basis for this request through AFBCMR was to ensure my late husband's medical records would be corrected.

Before, I asked AFBCMR to correct my husband's medical records; I originally gave Doctor Freedman's medical report to the Veteran's Administration (VA) in 1990. After giving the VA a copy of Doctor Freedman's medical report, they did not correct his medical records; and the VA state in their denial decision that Doctor Freedman's report, does not show he had cancer while in the military. Thus, it became imperative for my husband's medical records to be (1) corrected, (2) reviewed with the corrected medical data, so that, (3) a determination in my case could be made, as to, (4) **whether or not a pre-existing condition was present while in the military which may have led to the development of cancer**.

Under the law, for a service connected disability, I do not have to prove my husband had cancer while in the service. However, I do have to prove, "he had a pre-existing condition which may have led to the development of cancer while in the military.

My original request through AFBCMR for a medical records correction was filed within the time period of the law and prior to the VA filing a Court Motion to have my case dismissed. AFBCMR filed my request for a medical records correction on 9 Nov 92. After I made this medical request through AFBCMR, they notified the VA. AFBCMR had to request release of my husband's medical records through the VA, so each agency was aware of the situation prior to the VA's denial and dismissal of my case. Court records show my case was dismissed by the United States Court of Appeals for the Federal Circuit, case number 93-7016, by order of the Court who granted the Motion of the Secretary of Veteran's Affairs on February 10, 1993.

After AFBCMR denied my request for correction, I requested reconsideration of this issue on October 28, 1992. AFBCMR then refused to reconsider my request, and in their letter to me dated November 22, 1994, paragraph two states: In your application to the Air Force Board for Correction of Military Records, dated October 28, 1992, you asserted a date of discovery of April 16, 1990, which would if correct make the application timely-, however, the essential facts which save rise to the application were known by you long before the asserted date of discovery.

AFBCMR's 22 November 1994 letter also states: Knowledge of those facts constituted the date of discovery and the beginning of the three-year period for filing. This lawsuit against the Government is being filed because; AFBCMR has denied my rights to public information, facts that constitute the date of discovery for the three-year filing period. And for documents and/or records which support AFBCMR's refusal for correcting my late husband's medical records. Also to date, AFBCMR has not released any records, written documents and/or information, which shows, I had prior knowledge of the asserted facts about my husband's 1986 radiology report prior to the asserted date of discovery. Also, this case shows: AFBCi\4R is refusing to release medical documents, which support their denial decision. According to Federal Rule of Civil Procedure 56(c) under law AFBCMR must release all written documents and/or affidavits they have in support of facts that show or support, I, Myra R. Edwards had knowledge of the asserted date of discovery for my late husband's 1986 radiology report from Malcolm Grow Medical long before the asserted date of discovery. Also AFBCMR must release all written documents and/or information that support their denial decision, per my written request.

After submitting my claim for a medical records correction, I informed AFBCMR that several medical doctors had reviewed my late husband's medical records and that I had received several medical reports, which had been given to the Veteran's Administration in support of my Dependency Indemnity Compensation (D.I.C.) claim. From the doctors who reviewed my husband's medical records-, only Doctor Freedman discovered the error on his original 1986 radiology report.

I believe Doctor Freedman discovery of this error is aided by the fact that he reviewed duplicate radiology film. Each of the other doctors had available to them the medical reports and written radiology reports which remain uncorrected. Only, by way of Doctor Freedman's radiology report was Malcolm Grow Medical Center's error discovered.

When I submitted my request for a medical records correction, I also told AFBCMR that the VA is deciding my case, to let them know, the VA is adjudicating this claim. Based on the report I received from Doctor Matthew Freedman, I asked AFBCMR to correct my husband's 1986 radiology report and to review his entire medical file, so that a determination could be made as to whether or not the nodular densities/nipple shadows found on earlier chest x-ray's (for the years 1979 through 1981) were related to the nodular/densities/nipple shadows found on Doctor Freedman's 1990 radiology report. I also asked AFBCMR for a medical determination on whether or not the nodular densities/nipple shadows found on the preceding chest x-ray's could represent the beginning of a pre-existing condition which eventually led to the development of cancer.

My husband died of large cell cancer of the lung. It is my belief that his lung cancer is service related, and that he developed a pre-existing condition (nodular densities/nipple shadows) while serving on active duty. I further believe this preexisting condition may have lead to the development of his lung cancer. I also believe, Doctor Matthew Freedman's medical report supports a finding that a pre-existing condition may have been present while in the military which went undetected until 1987, the year Malcolm Grow Medical Center discovered his cancer.

I also believe, in 1986 his radiology report from Malcolm Grow Medical Center shows the hospital made a material medical error in that, the original medical report from Malcolm Grow states; his lungs are normal. Thus, the doctor's reviewing this information could not conclude he had a medical problem before 1987, because the medical record as written does not support the existence of a pre-existing condition which may have led to the development of cancer while in the military.

I believe, my husband is due a benefit for the pain and suffering he went through prior to death as a result of Malcolm Grow Medical Center's medical negligence and that the family of the deceased is due a benefit for the family's income loss, and mental stress Malcolm Grow put us through before his cancer was discovered. To include stress after surgery for complications which show he suffered before death.

I believe that the Air Force has denied my rights to a fair and equitable decision concerning my late husband's medical records because of their refusal to correct his 1986 radiology report, which was found by Doctor Freedman to be in error. Malcolm Grow Medical Center's 1986 radiology report shows his chest and lungs are normal with no abnormalities present. In contrast, Doctor Freedman's 1990 radiology report for duplicated film found two nodular densities/nipple shadows present on the lungs.

AFBCMR's letter to me concerning correction of my husband's medical records states in the letter dated November 22, 1994, paragraph 4: We have examined your request and we find that it does not meet the criterion for reconsideration by the Board. Reconsideration is provided only where newly discovered relevant evidence is presented which was not reasonably available when the application was submitted.

Under law, I am due all information which explains the criterion for reconsideration; the reason why the medical facts presented by Doctor Freedman were not considered or examined by AFBCMR; and why I did not receive a medical report which explains what was done in the review of my lawful claim for a medical records correction. I am also due information which explains why in this case, "only newly discovered relevant evidence can be considered which was not reasonably available when the application was submitted"

REMEDY SOUGHT:

It is my belief that, the doctor's who reviewed my husband's 1986 radiology report at Malcolm Grow Medical Center were negligent, and that, medical facts which should have been apart of his medical records at the time of examination, but still remains uncorrected.

Therefore, I am still seeking a medical records correction of my late husband's medical records and a medical review of the corrected medical records. If the requested medical finding shows Malcolm Grow Medical Center was negligent on the 1986 radiology report in question, I will seek monetary redress in the amount of $2,750,000.00 to cover my husband's loss wages, to cover his pain, suffering, medical bills, in home care (nursing), loss of services to Myra R. Edwards wife and consortium, benefits for Hartwell E. Edwards and Stephen J. Edwards who were minors at the time of their fathers death who also loss services, guidance and support from their father. Please note: I will request a jury trial.

Respectfully submitted,

/s/ ________________

Myra R. Edwards
Pro Se Representative
1120 Windemere Court
Fort Washington, MD 20744
703-806-3447

POINTS AND AUTHORITIES

Points as stated in the Civil Complaint
Authorities: Rules of the U.S. District Court - Maryland Rule 10 I-105(6)
Federal Rules of Civil Procedure Rule 56(c)
Federal Rules of Civil Procedure Rule 56(e)
28 USC section 2401
Previsions of Title 10, of the U.S. Code, Section 1552
5 USCS section 706
Freedom of Information Act (5 USCS section 552)
Order of the United States Court of Appeals for the Federal Circuit, case no. 93-7016,
Myra R. Edwards, claimant-Appellant, v. Jesse Brown, Secretary of Veterans Affairs,
Respondent-Appellees.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this] 4th day of October 1995, a copy of the foregoing "Civil Complaint" is being resubmitted to the United States District Court of Maryland, Office of the Clerk, by Certified Mail - Return Receipt Requested (Article No. Z015 847 638).

Myra L. Edwards

UNITED STATES DISTRICT COURT
-DISTRICT OF MARYLAND

MYRA R. EDWARDS *
*
Plaintiff *
v. * Civil No. DKC-95-3115
*
DEPARTMENT OF THE AIR FORCE *
AFBCMR *
Defendant *
...000 .....

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS PIAINTIFFS COMPLAINT

I. STATEMENT OF THE CASE

Plaintiff, Myra R. Edwards ("Mrs. Edwards"), is the widow of Hartwell E. Edwards, a former member of the Air Force. She brings this action against the defendant, Department of the Air Force, Air Force Board for Correction of Military Records ("AFBCMR"), pursuant to the Freedom of Information of Act ("FOIA"), as amended 5 U.S.C. § 552(a)(4)(B). Mrs. Edwards seeks to enjoin the defendant from withholding agency records and to compel the production of records.

It also appears that plaintiff brings this action under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. SS 2671, et seq. Alleging that Malcolm Grow Medical Center negligently read an x-ray in 1986, Mrs. Edwards seeks damages in the amount of $2,750,000.00.

II. STATEMENT OF FACTS

In May 1982, MSgt Edwards retired from active duty. Prior to his retirement, he was given a physical, which included a chest x-ray in August 1981. MSgt Edwards had other chest x-rays prior to those he received as part of his "retirement physical." (See exhibit 1, Transcript of the Administrative Record relative to the Air Force case of Hartwell E. Edwards ("TR"); pp. 059-60.).

MSgt Edwards was treated in March 1985 for bronchitis, aggravated by his 30 years of smoking and mild pleuritis. In February 1986, he had a chest x-ray and it "was interpreted as normal, with no abnormality of the lungs." (TR. 060.).

MSgt Edwards was found to have had a right lower lobe infiltrate in October 1987. Records of subsequent treatment show that in a January 1988 chest x-ray examination, MSgt Edwards' "right lower lobe process was found to appear strongly suspicious for malignancy" and in February 1988, he was diagnosed with cancer. In March 1988, a right pneumonectomy was accomplished. He expired on October 11, 1988 because of lung cancer. (TR. 060-61).

Attempting to establish a service connection in conjunction with a claim to the VA for death benefits, Mrs. Edwards had three (3) different doctors review her husband's medical records. All felt that the projections on the earlier x-rays were nipple shadows. (TR. 079-80, 081-83, 087).

On June 18, 1991, the Board of Veterans' Appeals ruled on plaintiff's claim for entitlement. Mrs. Edwards argued that her husband's death was service connected. The Board found that the fatal lung cancer was not etiologically related to any lung pathology or other pathology present during his service and that she did not submit a well-grounded claim. The Board denied service connection for the cause of death. (TR. 056-64.).

By application dated October 28, 1992, Mrs. Edwards attempted to have certain x-rays and medical diagnoses in MSgt Edwards' medical records "corrected" by the AFBCMR, which would, in turn, favorably impact her entitlements to VA benefits. (TR. 07172.). On that application, Mrs. Edwards indicated that the "alleged error or injustice data" was discovered on April 16, 1990 (TR. 071, block 11.a). The AFBCMR denied her application as untimely filed, in essence holding that she discovered, or reasonably could have discovered the "alleged error or injustice data" well before the date of discovery she asserted, or, at least within three (3) years of her husband's date of death. (**TR.** 070.).

On October 21, 1994, Mrs. Edwards requested that AFBCMR reconsider their decision. (**TR.** 032.). By letter dated November 22, 1994, AFBCMR found that her request did not meet the criterion for reconsideration. AFBCMR pointed out to Mrs. Edwards, however, that

> "Although your application was denied because of timeliness, the Board also reviewed the merits of your case. The governing statute permits the Board to waive timeliness *** '... in the interest of justice.' The Board reviews the merits of untimely applications and, if found to be meritorious, waives timeliness in the interest of justice. In your case, the Board found no error or

> injustice warranting correction of your late husband's records but elected to decide the case on timeliness." (Emphasis added.)

(TR. 030-31.).

Despite AFBCMR's notice to Mrs. Edwards that her application was, in fact, reviewed on its merits, she has set out to disprove the "untimeliness" aspects of her application. Mrs. Edwards f eels she did not know about the "error" in the x-ray interpretation until Dr. Freeman provided his opinion in April 1990 (TR. 087.); AFBCMR asserts that Mrs. Edwards knew or could have reasonably discovered this in 1988 when her husband passed away.

On November 25, 1994, and April 13 and May 9, 1995, Mrs. Edwards submitted requests to the Air Force pursuant to the FOIA. She asked for "all facts, which show," that she knew about her husband's medical condition before the "date of discovery" she entered on her application. (See exhibit 2, Declaration of Carolyn W. Price ("Price Declar. "), attachments 1, 3, and 5.) . The agency responded to each request, stating that the agency is not required to answer questions, draw conclusions, or render subjective evaluations in response to FOIA requests. (See exhibit 2, Price Declar., attachments 2, 4, and 7.).

Obviously dissatisfied with the responses provided by the Air Force, plaintiff filed this action. The Air Force re-evaluated plaintiff Is requests. In a light most favorable to this requester, the Air Force released two (2) documents which they consider, arguably, to be responsive to Mrs.

Edwards' requests, namely her husband's death certificate and her application to AFBCMR which were submitted by Mrs. Edwards. The AFBCMR further advised Mrs. Edwards that there are no other documents responsive to her requests. (See exhibit 2, Price Declar., attachment 9 and, exhibit **3,** Declaration of Mack M. Burton "Burton Declar."). As to that action by the Air Force on December 14, 1995, Mrs. Edwards has filed an administrative appeal. (See exhibit **4.)**

III. ARGUMENT

A. Plaintiff's Complaint Should Be Dismissed

1. The FOIA Aspects of Plaintiff's Complaint:

a. Plaintiff has Failed to State a FOIA Claim Against the Defendant

It is clear that the FOIA is a disclosure statute. EPA v. Mink, 410 U.S. 73, 80 (1973). It establishes the right of access to agency records. 5 **U.S.C. S** 552(a), as amended.

Plaintiff's FOIA requests (for "all facts which show" that she knew or should have known about her husband's medical condition well before the "date of discovery" she entered on her application to "correct" certain medical information) demand that the agency answer questions, draw conclusions, or render subjective evaluations in order to respond to such requests. Agencies are not required, however, to answer questions posed as FOIA requests. Zemansky v. EPA, 767 F.2d 569, 573-74 (8th Cir. 1985); DiViaio v. Kelley, 571 F.2d 538, 542-43 (10th Cir. 1978). The FOIA is "not a vehicle for interrogating the agency," rather it "is a means of obtaining agency records." Fritz v. IRS, 862 F. Supp. 234 (W.D. Wisc. 1994).

As a disclosure statute, the remedy under FOIA is just that - disclosure. Therefore, the plaintiff cannot obtain money damages under FOIA. Daniels v. St. Louis VA Regional Office, 561 F. Supp. 250, 251 (E.D. Mo. 1983) (an action against an agency for money damages is not provided for in the FOIA statute).

b. The Court Lacks Subject Matter Jurisdiction Over the FOIA Claim

While the FOIA grants district courts jurisdiction to enjoin an agency from improperly withholding agency records (5 U.S. C. S 552 (a) (4) (B)) , a prerequisite to that jurisdiction is that there must be improper agency action under the statute for which judicial review may be sought. The Supreme Court defined the limits of that jurisdiction in Kissinger v. Reporters Committee for the Freedom of the Press, 445 **U.S.** 136 **(1980),** when it said:

> "Under 5 U. S. C. section 552 (a) (4) (B) federal jurisdiction is dependent upon a showing that an agency has (1) 'improperly'; (2) 'withheld'; (3) 'agency records'. Judicial authority to devise remedies and enjoin agencies can only be invoked, under the jurisdictional grant conferred by section 552, if the agency has contravened all three components of this obligation."

445 U.S. at 150. See also, NLRB v. Sears, Roebuck and Co., 421 U.S. 132 (1975).

If no agency records have been improperly withheld, the Court lacks jurisdiction over the subject matter. See, Niemeier v. Watergate Special Prosecution Force, 420 F. Supp. 794 (N.D. Ill. 1976), rev'd and rem'd, 565 F.2d 967 (7th Cir. 1977). Additionally, "[w]henever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action." Fed. R. Civ. P. 12(h)(3). (Emphasis added.)

In this case, there has been no improper withholding of agency records. To the extent that plaintiff has articulated a request for documents under this disclosure statute, AFBCMR did not locate any records that satisfied Mrs. Edwards' requests. There are only two (2) documents that can possibly be responsive to her requests and they were released to her after this action was filed. (See exhibit **2**, Price Declar., attachment 9). The defendant maintains that it has no other responsive records and, therefore, there has not been an improper withholding of agency records.

2. The AFBCMR "Correction" Aspects of Plaintiff's Complaint:

a. The District Court Lacks Jurisdiction to Entertain a Claim For Money Damages In Excess of 10,000.00

The AFBCMR is governed by 10 U. S. C. S 1552. Its purpose is to establish procedures for the correction of military records by the Secretary of the Air Force through the AFBCMR. The procedures are set out in 32 C.F.R. S 865.0, et seg. The United States "is immune from suit save as it consents to be sued ... and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." United States v. Testan, 424 U.S. 392, 399 (1976), citing United States v. Sherwood, 312 U.S. 584, 586 (1941). A congressional waiver of sovereign immunity cannot be implied, but must be unequivocally expressed in statute." United States v. Mitchell, 445 U.S. 535, 538 (1980); United States v. King, 395 U.S. 1, 4 (1969); Testan, at 399. "[W]hen Congress attaches conditions to the legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed, and exceptions thereto are not to be lightly implied." Block v. North Dakota ex rel. Board of University & School Lands, 461 U.S. 273, 287 (1983).

Plaintiff seeks money damages in excess of $10,000 from the United States.[1] To the extent she seeks tort damages, her claim should be dismissed under Feres. To the extent she seeks non-tort money damages, her only plausible jurisdictional basis lies in the Tucker Act, 28 U.S.C. §§

Arguably, the plaintiff has a cause of action pursuant to the Administrative Procedures Act, 5 U. S. C. § 701, et seq., for judicial review of the final decision of the Secretary of the Air Force in denying her application f or correction of military records. However, the APA is not a waiver of sovereign immunity for imposition of monetary damages. Therefore, even if this Court had subject matter jurisdiction to consider an APA claim, this Court could not afford the plaintiff complete relief. Therefore, if this Court determines that the plaintiff has stated a claim f or review under the APA, the case should be transferred to the United States Court of Federal Claims pursuant to 28 U.S.C. S 1631. Cook v.

Secretary of the Air Force, 860 F. Supp. 901 (D. Oregon 1994).

1346(a) (2) and 1491, which invests exclusive jurisdiction in the United States Court of Federal Claims for non-tort claims involving money damages against the United States exceeding $10,000. It provides:

> "The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

28 U.S.C. S 1491. District Courts do not have jurisdiction over Tucker Act claims which involve amounts in excess of $10,000:

> "The district courts shall have original jurisdiction, concurrent with the United States Claims Court, of any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution or any Act of Congress, or any regulation of an executive department, or upon express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort...

28 U.S.C. S 1346(a) (2).

The relief requested by the plaintiff would clearly exceed the $10,000 jurisdictional limit of this court. Therefore, the plaintiff's Complaint should be dismissed for lack of jurisdiction.

3. The FTCA Aspects of Plaintiff's Complaint:

a. The Court Lacks Subject Matter Jurisdiction

Plaintiff appears to be seeking money damages for negligence by Malcolm Grow Medical Center for negligently reading her husband's 1986 x-ray. To the extent that this Complaint constitutes a tort claim, this Court lacks jurisdiction because plaintiff has never presented her tort claim to the agency as required by the FTCA. 28 U.S.C. S 2675(a).

The FTCA requires, as a prerequisite to the commencement of any lawsuit, that:

> "[a]n action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail."

28 U.S.C. S 2675(a).

Plaintiff's failure to file an administrative claim with the Department of the Air Force divests this Court of subject matter jurisdiction. As the Fourth Circuit noted in Henderson v. United States, 785 F.2d 121, 123 (4th Cir. 1986):

> "Plaintiff must meet certain prerequisites before filing an action under the Federal Tort Claim Act in federal court. The FTCA clearly provides that prior to bringing an action against the United States, a claimant shall have first presented the claim to the appropriate federal agency... It is well settled that this requirement is jurisdictional and cannot be waived."

Plaintiff has not alleged that she has filed such a claim. The burden of providing that an administrative claim has been filed with the agency lies with the plaintiff. Kielwein v. United States, 540 F.2d 676, 679 n.6 (4th Cir. 1976).

Because plaintiff has not alleged compliance with this jurisdictional prerequisite to suit, or that such a claim has been administratively exhausted; her Complaint must be dismissed.

IV. CONCLUSION

For the reasons set forth herein, defendant respectfully submits that this action should be dismissed.

Respectfully submitted,

Lynne A. Battaglia
United States Attorney

/s/ ____________________
Kaye A. Allison
Assistant United States Attorney
Bar No. 09084
604 United States Courthouse
101 West Lombard Street
Baltimore, Maryland 21201
410/962-4822

OF COUNSEL:
Captain Celeste R. Gamache
Special Litigation Branch
General Litigation Division
Department of the Air Force
Washington, D.C. 20324-1000

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS
Plaintiff
v. CIVIL ACTION No. DKC-95-3115

DEPARTMENT OF THE AIR FORCE
AFBCMR
Defendant

I, Carolyn W. Price, being first sworn say that:

The statements made herein are based upon by personal knowledge, upon information made available to me in my official
capacity, and upon conclusions and determinations reached and made in accordance therewith.

I am the Chief, Documentation Information & Services Section, 11th Wing, Bolling Air Force Base, D.C. My duty station is the Pentagon. Part of my duties includes managing the Freedom of Information Act (FOIA) program for the Secretariate, Air Staff, and the 11th Wing. I have been employed in this capacity for 5 1/2 years and have 10 years of experience in the FOIA area. I have attended several courses on FOIA including "FOIA for Access Professionals," sponsored by the Department of Justice.

I have reviewed the three FOIA requests made my Ms. Myra Edwards to the Air Force Board for Correction of Military Records (AFBCMR). In her first request, dated November 25, 1994, she asked the AFBCMR to "disclose all facts which show: "The essential medical facts which gave rise to my [sic] application were known by Myra R. Edwards, long before the asserted date of discovery." Mr. Mack Burton, the Executive Director of the AFBCMR, responded by letter dated March 28, 1995 that:

> FOIA does not require agencies to answer questions, draw conclusions, nor otherwise render subjective evaluations in response to a request. The FOIA only requires agencies to provide specifically identified records, subject to itemized exemptions, which contain information responsive to a request. Since you are seeking to challenge a subjective determination by the Board, this is not a matter within the purview of the FOIA. (Atch 2).

On April 13, 1995, Ms. Edwards made a second FOIA request to the AFBCMR (Atch 3). Her request was the same as her first request except that she asked for the "documents that state/show: The essential medical facts which gave rise to my [sic] application were known by Myra R. Edwards, long before the asserted date of discovery." I answered this FOIA request on May 4, 1995, essentially the same as the first request. (Atch 4). I also told her that:

> the Board found no error or injustice warranting correction of you late husband's records, but elected to decide the case on timeliness. In other words, even had your application been timely, based on the evidence submitted, the Board would not found an adequate basis to recommend favorable consideration of your case.

On May 9, 1995, Ms. Edwards submitted her third FOIA request. (Atch 5). She requested the same information. On May 11, 1995 she wrote another letter in which again she asked for the same information. (Atch 6). On May 22, 1995, a response to the third FOIA request was sent to Ms. Edwards. (Atch 7). Mr. Burton again told Ms. Edwards the Air Force is not required under FOIA to "answer questions draw conclusions, nor otherwise render subjective evaluations in response to a request."

On May 24, 1995, Ms. Edwards sent another letter to the AFBCMR concerning the same information. (Atch 8). This letter does not request documents, but alleges:

> AFBCMR is continuing to deny my rights for receiving the requested documents by making the following false

> statement about this request: FOIA does not require agencies to answer questions, draw conclusions, nor otherwise render subjective evaluation in response to a request.

Neither Mr. Burton, nor I interpreted this letter as a new FOIA request.

After this lawsuit was filed, Ms. Edwards FOIA file was reviewed again. To ensure the Air Force complied with the FOIA request, we provided a copy of MSgt Edwards' death certificate and a copy of Ms. Edwards' AFBCMR application to Ms. Edwards on December 14, 1995.

DATED, this 29th day of January, 1996.

/s/" ______________________ "
CAROLYN W. PRICE

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

MYRA R. EDWARDS *
*
Plaintiff *
*
v. ***Civil No. DKC-95-3115**
*
DEPARTMENT OF THE AIR FORCE
*
Defendant *

..... 000.....

DEFENDANT'S REPLY MEMORANDUM

Defendant, by and through counsel, states that plaintiff raises no new legal issues in her opposition to defendant's Motion to Dismiss Plaintiff's Complaint and supporting memorandum ("Defendant Is Motion"). Defendant maintains that this action should be dismissed. Defendant relies on its original motion and memorandum of law with supporting documents and further states as follows:

1. Plaintiff Is Not Entitled To Any Relief Under FOIA.

Plaintiff fails to understand that the Freedom of Information Act ("FOIA") is a mechanism for citizens to access existing agency records, rather than a method to challenge agency actions or decisions. As a result, she continues to assert that defendant has refused to disclose facts relative to a decision on her claim by the Air Force Board f or Correction of Military Records ("AFBCMR").

The FOIA statute, however, does not require the defendant to answer questions or create documents in order to be responsive. Instead, the FOIA statute requires defendant to disclose documents, which are responsive to plaintiff's request. To that end, defendant has, already, provided the only arguably responsive documents to plaintiff's request.

1. Plaintiff Is Not Entitled To Any Other Relief.

In her opposition to Defendant I s Motion, plaintiff listed three (3) items in her request for relief.

First, plaintiff requests that her husband's medical records be corrected. Her application to the AFBCMR to correct her husband's medical records was denied as untimely. Additionally, the AFBCMR determined it was not in the interest of justice to waive its statute of limitations. Plaintiff contends that she filed her claim with the AFBCMR within the time allotted. Under 10 U.S.C. S 1552(b), an application must be made within three (3) years of discovery. The board may excuse a failure to file within three (3) years if it is in the interest of justice. Id.

This issue was examined closely in Ortiz v. Secretary of Defense, 842 F. Supp. 7 (D. D.C. 1993), rev. on other grounds, 41 F.3d 738 (D.C. Cir. 1994).

> The statutory limitation periods governing BCMR review states, "However, a [BCMR] may excuse a failure to file within three years after discovery, if it finds it to be in the interest of justice. 10 U.S.C. § 1552(b) (emphasis added). The provision on its face makes it clear that the determination of whether to excuse late filing lies exclusively with the Board. Even then, the language is "may excuse", not "shall excuse". No standards for review are suggested... While the statute may provide a "safety valve" for instances when it would be inequitable for a military record to remain uncorrected, control of this "safety valve" was placed by Congress in the hands of the BCMRs.'

Id. at 12. But see, Guerrero v. Stone, 970 F.2d 626 (9th Cir. 1992).

Plaintiff was informed by the AFBCMR that her case was reviewed both on the merits and on the timeliness issue. (Defendant's Motion, page 3, Tr. 069.) The AFBCMR stated in their response to plaintiff on her request for reconsideration:

> The Board reviews the merits of untimely applications and,

> if found to be meritorious, waives timeliness in the interest of justice. In your case, the Board found no error or injustice warranting correction of your late husband's records but elected to decide the case on timeliness.

(Defendant's Motion, page 3, TR. 030-31.) The AFBCMR reviewed the merits of plaintiff's case, including Dr. Freeman's evaluation, but found it was not in the interest of justice to waive the timeliness issue.

MSgt Edwards died on October 11, 1988. Dr. Ruxer on September 27, 1989, Dr. Freeman on April 16, 1990, and Dr. Schoenberger wrote the evaluation of his condition on December 5, 1990. Plaintiff waited until October 28, 1992 to file her case with the AFBCMR, more than 4 years after her husband's death. All of these doctors stated in their evaluations that the shadow on MSgt Edwards' left lung was projected there by his nipple, exactly as his medical records indicate. MSgt Edwards' cancer was not discovered in his left lung, where the nipple shadow was, but in his right lung.

In Ballenger v. Marsh, 708 F.2d 349, 351 (8th Cir. 1983), the Court stated that a decision of the AFBCMR not to review an untimely application was not "an appropriate decision for review by a federal court." The D.C. Circuit has noted that "The decision to grant an exception to the applicant appears to be wholly within the Board's discretion." Kendall v. Army Bd for Correction of Military Records, 996 F.2d 367 at n.8 (D.C. Cir. 1993). If the decision of the AFBCMR to not waive the period of limitations in the interest of justice were reviewable, the applicable standard would be whether the action of the military agency conformed to the law or was arbitrary, capricious or contrary to the evidence. Ortiz, 842 F. Supp. at 12. See also, Dodson v. U.S. Government, Dept of the Army, 988 F. 2d 1199 (Fed. Cir. 1993); King v. United States, 19 Cl. Ct. 703, aff'd, 918 F. 2d 186 (Fed. Cir. 1993); and Yagjian v. Marsh, 571 F. Supp. 698 (D. N.H. 1983).

As the determination of whether to waive its statute of limitations is a discretionary one, which is not reviewable, this court lacks jurisdiction to hear this case and it should be dismissed.

Plaintiff's second request is for damages for Malcolm Grow Hospital's alleged negligence in reading her husband's x-rays. As a tort claim, this Court lacks jurisdiction because plaintiff never presented a tort claim to the Department of the Air Force as required by the Federal Tort Claims Act (FTCA), 28 U.S.C. Section 2675(a). Plaintiff has not alleged in any of her pleadings that she has filed such a claim and the burden of proving that such a claim has been filed lies with the plaintiff. Kielwein v. United States, 540 F. 2d 676, 679 n. 6 (4th Cir. 1976). Plaintiff's failure to file an administrative claim with the Department of the Air Force divests this Court of subject matter jurisdiction. See Henderson v. United States, 785 F.2d 121, 123 (4th Cir. 1986).

Since plaintiff has not complied with this jurisdictional requirement or exhausted her administrative remedies under the FTCA, her Complaint must be dismissed.

Plaintiff's final request for relief is that the correction of her husband's medical records be extended to her case before the United States Court of Veterans' Appeals (VA). This request for relief should be dismissed as it fails to state a claim upon which this Court can grant relief. This request was not made in plaintiff's original Complaint. The plaintiff is trying to relitigate her VA claim. The VA is not a part of the Department of the Air Force or the Department of Defense. The defendant does not have the authority to speak on behalf of the VA nor implement any ruling the Court may make in conjunction with this case. The VA is not named as a party in this action nor has it filed any response to plaintiff's Complaint. As such, this request for relief should be dismissed for failure to state a claim upon which relief may be granted.

In conclusion, defendant submits that this action should be dismissed, there being no relief to which plaintiff is entitled.

Respectfully submitted,

Lynne A. Battaglia
United States Attorney
Kaye A. Allison

Assistant United States Attorney
Bar No. 09084
United States Courthouse
101 West Lombard Street
Baltimore, Maryland 21201
410/962-4822

CERTIFICATION OF SERVICE

I hereby certify that on this 12TH day of March 1996, a copy of Defendants' Reply Memorandum was sent, first class mail, postage prepaid, to Myra R. Edwards, 1120 Windemere Court, Fort Washington, Maryland 20744, plaintiff...

/s/ ____________________________
Kaye A. Allison
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

MYRA R. EDWARDS

Plaintiff

Civil No.
DKC-95-3115

Vs.

DEPARTMENT OF THE AIR FORCE
AFBCMR

Defendant

REQUEST JUDICIAL REVIEW GIVING PLAINTIFF RIGHT TO SUE BASED ON MERITS OF CLAIM

COMES NOW, the plaintiff, Myra R. Edwards, pursuant to the Rules of Civil Procedure, requesting Judicial Review giving the plaintiff the right to sue AFBCMR for denial of substantive rights protected by the Constitution which shows under Title 10 of the U.S. Code § 1552 and 5 U. S .C .S. § 522a(d) the rights of the plaintiff have been denied for having her late husbands 1986 chest X-ray report corrected. The plaintiff states: the 1986 radiology report in question, shows a error was found on the original medical report based on the radiology report the plaintiff received from Doctor Matthew Freedman, radiologist at Georgetown University Hospital in 1990. Thus, the facts in support of the plaintiffs case show, the error found on Hartwell E. Edwards 1986 radiology report can be found within Malcolm Grow Medical Center's System of Records.

Under the Federal Advisory Committee Act, an agency is generally obligated under 5 U. S. C. S. § 552 to make available for public inspection and copying, all materials that were made available to, or prepared for or by, an advisory committee. Thus, the exception for materials an agency releases falls under what is **reasonably** believed to be exempt from disclosure pursuant to FOIA. Under 5 U. S. C. S. documents considered as being reasonably exempt are those which the Court has ordered not disclosed, classified documents or documents classified as National Security records.

This case before the U.S. Federal Court shows: AFBCMR denied the plaintiff, the right to have her late husband's 1986 chest X-ray report corrected in 1994; because the committee states, "The essential medical facts which gave rise to the [sic] application were known by Myra R. Edwards, long before the asserted date of discovery." However, the plaintiff brought this case before the U.S. District Court because, AFBCMR has failed to release any tangible documents to show; their denial statements, as given by the committee, is supported by documents which show prior to the plaintiff receiving Doctor Freedman's 1990 radiology report, [she] had knowledge of the essential medical facts which gave rise to her application for a medical records correction.

Thus, the plaintiff finds the defendant, AFBCMR has refused to release documents prepared by the committee which show or support the medical fact that in 1986 Malcolm Grow Medical Center did not error on the original radiology finding. Therefore, it appears as though the Board for correction of military Records made a decision that a Federal Jury may determine was illegal and contrary to the laws of the Constitution, which govern military correction of documents within an agency's files. As the plaintiff has found the medical record in question is capable of being verified to show, AFBCMR's denial decision was intentional and that this decision denied the plaintiffs substantive federal rights. The plaintiff's suit before the U. S. Federal Court is based on facts which show, AFBCMR failed to give the U.S. Court documents which support their denial decision showing: (1) the statute of limitations period for the plaintiffs application expired based on the date, the Board determined the plaintiff had knowledge of medical facts about the original 1986 radiology report showing, the plaintiff knew Malcolm Grows 1986 radiology report was in error before she received Doctor Freedman's 1990 radiology report; (2)

Under Federal Law, AFBCMR has not declared the documents prepared by the advisory committee are exempted material and cannot be released to show: the plaintiff, Myra R. Edwards had essential medical facts which gave rise to the application for her request for a medical records correction long before the asserted date of discovery.

Therefore, the plaintiff has a right to bring suit before a Federal Jury to challenge the constitutionality of AFBCMR's denial decision to show: From November 1992 when the plaintiff made application for a medical records correction, through October 1994 when the plaintiff received AFBCMR's denial decision; the facts for this suit show, AFBCMR has not taken any reasonable steps to correct the error found based on Doctor Matthew Freedman's 1990 radiology report for chest X-ray film that were duplicated by Malcolm Grow Medical Center which show in 1990, the plaintiff received medical facts for the correction of her late husband's 1986 radiology report. Therefore, based on Doctor Freedman's finding, the plaintiff in 1992 requested under the provisions of Title 10 of the U.S. Code § 1552 a medical records correction.

It is the plaintiffs position that she has a constitutional right under the provisions of Federal Procedure, to request a jury trial and to sue AFBCMR for failure to comply with Federal

Constitutional Laws, for the correction of Hartwell Ervin Edwards 1986 radiology report, based on the medical finding, the plaintiff received from Doctor Matthew Freedman, radiologist at Georgetown University Hospital in 1990.

Thus, the plaintiff finds, based on the 1990 radiology report given to AFBCMR that Malcolm Grow Medical Center has intentionally failed to correct and maintain medical data that will be once again reviewed for a medical opinion, to find out whether or not, a pre-existing condition was present while my husband served on active duty, but was not detected until 1987 when Malcolm Grow Medical Center discovered lung cancer.

This case shows AFBCMR requested the medical records of Hartwell E. Edwards on various occasions from the Department of Veterans Affairs. Therefore, if timeliness is a issue, the plaintiffs case show: The Department of Veterans Affairs had not released a copy of Hartwell E. Edwards medical records on 12 April 1993 based on facts which show the Department of Air Force state in item number (c) state, they are awaiting receipt of medical records from the Department of Veterans Affairs. And notice which shows on 23 June 1993 the Department of the Air Force state in item number (c), which states, this is the third request for medical records from the Department of Veterans Affairs. Therefore, issue of timeliness shows: The plaintiff cannot be held at fault for delay of Hartwell E. Edwards medical records being sent to the Department of the Air Force sometime after 23 June 1993. As this fact shows: The plaintiff made a request to AFBCMR on 9 November 1992 for a medical records correction and that it was the Department of Veterans Affairs who delayed sending the plaintiffs late husbands medical records to AFBCMR.

Therefore, the plaintiff shall argue; she made her request for a medical records correction within the three year time period specified by law and that it was the delay of the Federal Government who for whatever unknown reasons, did not honor the Department of Air Force request for a medical records correction until sometime after 23 June 1993, thereby making, the plaintiff request for a medical records correction to appear to be untimely based on facts which show, the Department of Air Force could not review the medical records of Hartwell E. Edwards until a time period after the three year statute limitation for the plaintiffs request.

Facts of this suit show the Military Corrections Board did review and make a decision for a medical records correction, but what is not known are facts which show: Malcolm Grow Medical

Center in 1986 made a material error on the original 1986 radiology finding. Therefore, the plaintiff shall bring suit before a Federal Jury to show past findings as given by Malcolm Grown Medical Center who found:

1. Chest X-ray dated 31 Mar 1978; there is an interstitial infiltrate involving the left mid lung field and or superior segment of the left lower lobe. Doctor Kyong S. Chai, M.D. Malcolm Grow Medical Center, diagnosed this finding.

2. Chest X-ray dated 15 August 1978; small nodular density superimposed over both lower lung fields is probably nipple shadows. AIG Lehkam, USAF, and a Malcolm Grow Medical Center radiologist diagnosed this finding.

3. Chest X-ray dated 18 March 1981; I see a density in the right lower lung field, which I believe to be the breast nipple. Tie S. Ong, M.D. a Malcolm Grow Medical Center physician, diagnosed this finding.

4. Chest X-ray dated 31 August 1981; there is suggestion of a rounded nodular density in the left mid lung zone just at the inferior aspect of the 9th left posterior rib. This most likely represents the nipple or possibly a mole on the patients skin, however I would recommend a follow-up PA. This finding was diagnosed by a Malcolm Grow

Medical Center physician/radiologist.

Arguably the plaintiff shall show a jury Malcolm Grow Medical Center found past findings of nodular densities/nipple shadows from 1978 through 1981. And that, it is not unreasonable to believe, in 1986 when Malcolm Grow medical Center failed to show a finding for nodular densities, a mistake was made for the original finding to show: Doctor Matthew Freedman in 1990 found, Hartwell E. Edwards original 1986 chest X-ray film showed two 1 cm nodular densities which were omitted from Malcolm Grows Medical Center's original finding.

The plaintiff's suit before the U. S. Federal Court is also based on facts which show: The defendant state in their denial decision that the Board of Corrections found no error or injustice warranting correction of Hartwell E. Edwards medical records, but elected to decide the case on timeliness. In other words, even had the plaintiffs application been timely, based on the evidence submitted, the Board would not found an adequate basis to recommend favorable consideration of your case.

Under Federal Law, the defendant AFBCMR, may not have found an adequate basis to recommend favorable consideration, but this fact must be determined by a Federal Jury because, to date, AFBCMR has not presented any documents to support the Boards decision for Summary Judgment by the U.S. Federal Court, thereby denying, the plaintiffs substantive Federal Rights for correction of her late husband's 1986 radiology report.

The plaintiff presented Doctor Freedman's 1990 radiology report in support of her claim to show in 1986, Malcolm Grow Medical Center made a material error on the original 1986 radiology report. Thus, to date, AFBCMR has not presented any documents or evidence to show, this finding is not correct. Therefore if the U.S. District Court has no evidence or facts to show, the 1990 radiology report, as given by the plaintiff's is in error; the court cannot grant Summary Judgment in favor of a decision for the defendant, because there is a contradiction of medical facts showing this contradiction is based on evidence that will be presented before a Federal Jury.

Therefore, it is the position of the plaintiff that she has a right, based on the merits of the claim, to bring this case before a Federal Jury.

The plaintiffs suit before the U. S. District Court is not one which will present facts to show, the nodular densities/nipple shadows/interstitial infiltrate found on past Malcolm Grow chest X-ray reports represent the lung cancer found by Malcolm Grow Medical Center in 1987. This suit was brought forth to show: The omission of material medical facts relative to past findings for nodular densities/nipple shadows which when corrected may show a pre-existing condition existed which lead to the development of lung cancer in 1987. However, the issue before this court is: past findings of nodular densities/nipple shadows and/or a finding for a interstitial infiltrate found in the years 1978 through 1981 by Malcolm Grow Medical Center for support of the plaintiffs case showing: Malcolm Grow Medical Center omitted a finding for nodular densities on the original radiology report. Please note, the plaintiff have based this fact on, the medical report the plaintiff received from Doctor Matthew Freedman in 1990 after Doctor Freedman, reviewed duplicated 1986 chest X-ray film supplied by Malcolm Grow Medical Center.

Thus, this case before the U.S. Federal Court shows, the plaintiff contents Malcolm Grows 1986 radiology report omitted a material medical finding in support of Malcolm Grows radiology findings for 1978 through 1981 showing Malcolm Grow Medical Center found nodular densities prior to 1986 which were believed to be nipple shadows.

Therefore, the plaintiff shall argue, Doctor Matthew Freedman's 1990 radiology report shows, in 1986 Malcolm Grow Medical Center did error on the original finding and that the past findings found on Malcolm Grow Medical Center's radiology gives credence to Doctor Freedman's finding. It is the plaintiffs position that Malcolm Grow Medical Center's past findings for the years 1978 through 1981 is related to: Doctor Freedman 1990 radiology report for duplicated film to show a Federal Jury, Doctor Freedman found: Two 1 cm nodular densities that may or may not represent nipple shadows and that this finding by Doctor Freedman shows, Malcolm Grow omitted a medical finding for nodular densities in 1986 to show, my late husband's medical records were in error when the Department of Veterans Affairs adjudicated my case for Dependency Indemnity Compensation Benefits.

In conclusion the plaintiff finds, the U. S. District Court cannot make a determination on facts relative to this suit about Doctor Freedman's medical finding to show this medical report represents a pre-existing condition which may have lead to the development of cancer in 1987; but this court can grant the plaintiffs request for a jury trial to show Malcolm Grow Medical Center made a material error on Hartwell E. Edwards 1986 radiology report. Showing, the plaintiff requested a medical records correction in accordance to law, to find this request was unjustifiably denied.

The plaintiff also finds the U.S. District Court cannot determine whether or not, the plaintiff made application for a medical records correction within the three year statute of limitations law based on the facts given; because the plaintiff state, the time period for the statute began in 1990 when she received Doctor Freedman's radiology report and the defendant alleges the time period for knowledge of asserted facts began at a time not specified or identified in the report AFBCMR filed in the **U.S.** District Court, in support of there denial decision. Therefore, the plaintiff comes before this court to state: Neither the **U. S.** District Court nor the plaintiff have facts which show, the plaintiff had knowledge of Malcolm Grow Medical Center omission of medical facts on the 1986 radiology report for nodular densities or possible nipple shadows.

Finally the U.S. Court has no facts for determination as to whether or not Doctor Freedman's 1990 radiology report is or is not in error; or facts, which show Malcolm Grows 1986 radiology report is or is not in error. So the issues the plaintiff has brought before the U.S. Federal Court will have to be adjudicated before a Federal Jury for determination as to whether or not, the plaintiffs have a substantive Federal Right for the correction of her husband's 1986 radiology report based on Doctor Freedman's 1990 radiology report for duplicated film.

Under Constitutional Law, the plaintiff has a right to insist that a agency take reasonable steps to maintain accuracy of information to assure fairness, especially when the facts show: A case is being adjudicated by the Board of Veterans Affairs for a decision based on the Benefit of the Doubt. And facts for this case show the Department of Air Force had to request my husband's medical records from the Department of Veteran's affairs before a denial decision by AFBCMR was rendered.

Also under Constitutional Law, the plaintiff have a right to receive documents which support a agency's denial decision to assure the agency has not rendered a unfavorable decision under Title 10 § 132 for "Scope of Judicial Review" showing the U. S. Courts can determine whether or not a Correction's Boards denial decision is: Arbitrary and capricious. Arguably, Federal and State Courts have concluded: An agency or committee must be cogent in the administration of its decisions for denial of a right or benefit, which is protected by the Federal Constitution.

The plaintiff is now requesting Judicial Review which will allow suit before a Federal Jury based on facts which show: On 16 April 1996, the plaintiff requested Summary Judgment based on the merits of the above entitled claim and after requesting Summary Judgment, the defendant failed to respond or answer the plaintiffs request for Summary Judgment.

The plaintiff finds the defendant believes the issue before this Court is: Please review defendant's Memorandum of Law in Support of Motion to Dismiss Plaintiffs Complaint filed in the U. S. District on or about 5 February 1996; MSgt Edwards was found to have a right lower lobe infiltrate in October 1997. Also review page 2, paragraph 3 under Statement of Facts found in the defendant's Memorandum, to show the defendant believes the plaintiff is attempting to establish a service connection in conjunction with a claim to the VA for death benefits. The plaintiff state: As a matter of law, she a right to establish a claim if justified and that, the Department of the Air Force under law, is required to maintain records which accurately state medical facts.

Thus, if the medical records as shown in my husband's medical files are accurate showing in 1986 Malcolm Grow Medical Center did not omit a material medical fact related to the three (3) different doctors who reviewed my husband's medical claim, the plaintiff has no case. However, if Doctor Freedman's 1990 radiology report is correct and Malcolm Grow did error on the original 1986 chest X-ray finding; plaintiff is within her Constitutional Rights for bringing suit and insisting in the interest of justice that correction is made.

The plaintiff is coming before the U.S. District Federal Court to request "Judicial Review which will give the plaintiff the right to bring this case before a Federal Jury for determination of the 1986 radiology report found in Malcolm Grow Medical Center's medical records. Judicial review of this case is based on the reports AFBCMR filed in Federal Court and based on reports the plaintiff filed in Federal Court.

Issues in dispute before the U.S. District Court are as follows:

1. AFBCMR states: FOIA does not require agencies to answer questions, draw conclusion, nor otherwise render subjective evaluations in response to plaintiff's request... The facts of this case show: The plaintiff did not bring suit to challenge the Boards right to render a subjective opinion. This suit arose because the Board refused to release documents which show or support the following facts: In 1986 Malcolm Grow did not error on the original 1986 radiology report found within Malcolm Grow Medical Center's System of Records. The facts for this case show neither the plaintiff nor the U. S. District Court have not received a medical finding to show, Hartwell E. Edwards medical records were not in error in 1986; even though past

radiology reports given by doctors who practiced at Malcolm Grow Medical Center found, nodular densities/nipple shadows and an interstitial infiltrate prior to 1986. Thus, if AFBCMR can show: Based on the Correction Boards findings there is a tangible report which shows, no error or injustice was found to warrant correction of Ms. Edwards late husband's medical records; Summary Judgment for the U. S. Federal Court could be: The plaintiff has no basis for bringing this suit before Federal Court. However if facts show there was an error on Malcolm Grow Medical Center's 1986 radiology report, then the plaintiff is due her right to litigate. The court should note, this suit was brought forth because the plaintiff discovered in 1990 Malcolm Grow Medical Center made a material error by omitting medical facts which show in 1986 Hartwell E. Edwards radiology report had nodular densities that the doctors at this time of examination were not aware of.

2. The Board state, they found no error or injustice warranting correction of your late husband's records, but elected to decide the case on timeliness. Arguably the plaintiff shall state: If the Board found no error or injustice warranting correction of my late husband's medical records; why didn't the Board send the plaintiff a copy of the report which verifies a finding that shows no injustice was found to warrant correction of Hartwell E. Edwards

1986 radiology report based on Doctor Freedman's 1990 radiology finding? Under Federal Law, the plaintiff is due, those documents which verify AFBCMR's denial decision. Under law the only way AFBCMR can deny the plaintiff a copy of the Board's findings is by Court order or by declaring this information as records for National Security. AFBCMR further state: This case was decided on timeliness; arguably, the issue of timeliness cannot begin before AFBCMR establishes by way of documentation, the time period in which the plaintiff had personal knowledge of the 1986 radiology report being incorrect. Thus, under law, AFBCMR cannot allege facts without providing documented proof that the alleged facts are true.

WHEREFORE, the plaintiff states: AFBCMR has not submitted a response to the plaintiffs U. S. District Court Filling for Summary Judgment filed on April 19, 1996. And that, AFBCMR has not complied with Federal Statues for correction of my late husband's medical records. Therefore based on this filing for Judicial Review for the merits of the entitled claim, the plaintiff has come before the Honorable Court to request a Federal Court Trial Schedule, so the facts as given for the plaintiffs Civil Complaint can be brought before a Federal Jury, based on the plaintiffs rights for judgment on all issues in dispute. Thus, the plaintiff is entitled to bring before a jury all issues the U. S. District Court cannot adjudicate. Thereby allowing the plaintiff the right to present stated facts found in her civil complaint before a jury to show AFBCMR failed to correct her late husband's 1986 radiology report in accordance to the provisions of Title 10 of the U. S. Code § 1552 and that AFBCMR failed to correct factual amendments believed warranted in Malcolm Grows Medical System of records as provided by 5 *U .S .C .S.* § 5522a(d).

Respectively submitted,

/s/ ____________________
Myra R. Edwards
Case No. DKC-95-3115
1120 Windemere Court
Fort Washington, MD 20744
703-806-3447

CERTIFICATION OF SERVICE

I **HEREBY CERTIFY,** that on this 26th day of June 1996, this "Request For Judicial Review Giving Plaintiff Right To Sue" is being sent Clerk, The United States District Court For The District of Maryland by certified mail, article number P 207 266 650; to the

Department of the Air Force, AFBCMR at 1535 Command Drive, EE Wing, 3rd Floor, Andrews AFB, Maryland 20331-7002 by first class mail, postage paid by Myra R. Edwards, and to Lynn A. Battaglia, United States Attorney, Attn: Kaye A. Allison Assistant United States Attorney, Bar No. 09084, at 604 United States Courthouse, 101 West Lombard Street, Baltimore, Maryland 21201 by certified mail, article number P 207 266 651.

Signed:

/s/ ____________
Myra R. Edwards

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

MYRA R. EDWARDS
Plaintiff

Civil No.
DKC- 95-3115

v

DEPARTMENT OF THE AIR FORCE
AFBCMR
Defendant

PLAINTIFF DEMANDS JUDGMENT ON DEFENDANT (S) MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS COMPLAINT

COMES NOW, the plaintiff Myra R. Edwards to demand judgment on defendant(s) "Memorandum Of Law In Support Of Motion To Dismiss Plaintiffs Complaint", showing the plaintiff submitted a counterclaim for "Judicial Review Giving Plaintiff Right To Sue Based On Merits Of The Plaintiff's Original Claim". The plaintiff is demanding judgment on all alleged facts the defendant has brought before the U. S. District Court For The District Of Maryland which shows to date, the defendant has not disclosed any medical reports and/or documents in support of their denial decision to show: AFBCMR and/or the Review Board found **no error or injustice warranting correction** of Hartwell E. Edwards Medical Records", but elected to decide the case on timeliness. Thus, the plaintiff is demanding to receive medical record(s) from AFBCMR which show the plaintiffs substantive rights have not been denied, but support facts that show the denial decision is/was based on Federal Law(s) that require AFBCMR to release medical records that support their denial decision under Title 10 section 132 for "Scope Of Judicial Review". Under law, if AFBCMR reviewed my late husband's 1986 radiology film and medical reports, and found **no** error or injustice based on Doctor Matthew Freedman's 1990 radiology report for duplicated chest x-ray film. And, if AFBCMR found **no** error or injustice on Malcolm Grows original 1986 radiology report based on the duplicated 1986 chest x-ray film that was given to Doctor Freedman after the plaintiff requested a copy of Malcolm Grows original 1986 chest x-ray(s). Then under federal law, AFBCMR must release a copy of their medical report to show, Malcolm Grow Medical Center's 1986 radiology report shows: No **error or injustice.** Under federal law, the plaintiff is due a copy of AFBCMR's medical finding to show: The Board's finding for the 1986 radiology film still in Malcolm Grow Medical Center's System of Records which should be given to show, Malcolm Grow did not make a material medical error on their original 1986 chest x-ray finding. Under law AFBCMR is required to release all medical findings/reports in support of their denial decision, to show, the new results of the medical examination for the 1986 chest x-ray film. By statute, AFBCMR is required to provide a new updated medical report that shows: No errors were found on Malcolm Grow Medical Center's 1986 radiology report to support the defendant's claim for not correcting MSgt Edwards 1986 radiology report, as this report relates to Doctor Freedman's 1990 finding which was given to the Review Board by the plaintiff in conjunction with establishing her claim to the VA for death benefits.

Thus, the plaintiff is demanding judgment based on AFBCMR's findings, as given on page 2, under "Statement Of Facts", in paragraph 4, for defendant's Memorandum Of Law In Support Of Motlon To Dismiss Plaintiffs Complaint showing: Ms. Edwards had three different doctors review her husband's medical records to find; all felt that the projections on the earlier x-rays were nipple shadows. However, the plaintiff finds: These three doctor's opinions maybe in error because Malcolm Grow Medical Center's 1986 chest x-ray report omitted a finding for nipple shadows and/or nodular densities. Therefore, the plaintiff is demanding that the U.S. District Court review Malcolm Grows 12/2/86 radiology finding which states: Chest - Standard radiographs of the chest in the frontal and lateral projections show no abnormality of the heart lungs, medisstinum or bony thorax; **"Impression, Normal Chest,"** for a determination by the U.S. District Court on whether or not, Doctor Freedman's medical finding support facts that show, in 1986, Malcolm Grow Medical Center omitted a finding for 2 I cm nodular densities; as this entitled case relates to facts that show, the defendant has failed to provide, to the Court, a medical finding that shows or supports: No errors or injustice was found based on AFBCMR's examination of my late husband's 1986 radiology film. Doctor Freedman's medical report was given to the plaintiff approximately two years after the death of MSgt Edwards, Based on the outcome of this lawsuit, the plaintiff shall have Doctor Freedman's 1990 radiology findings medically evaluated and compared to past radiology findings for the years 1978 through 1981 for a medical determination on whether or not, while in the military, my late husband developed a pre-existing condition which led to the development of cancer in 1987.

This entitled case shows the facts before the U.S. District Court are as follows: The plaintiff s substantive rights are being denied based on facts which show;

AFBCMR has refused to correct MSgt Edwards 1986 radiology report, and have refused to release a copy of their medical report which shows AFBCMR found no error or injustice, and facts that show AFBCN4R has refused to release a copy of their report which shows the plaintiffs application was not filed in a timely manner.

The plaintiff finds her lawsuit support facts that show: The current medical data found **in** Malcolm Grow Medical Center's System of Records, shows Malcolm Grows original 1986 medical finding did not include a finding for nodular densities and/or nipple shadows; even though Doctor Freedman's medical finding for duplicated chest x-ray film found nodular densities/nipple shadows not reported on Malcolm Grows original radiology report. Thereby requiring under law, a medical report in support of AFBCMR's denial decision to show, in 1986 my late husband's radiology report as found in Malcolm Grow Medical Center's System Of Records is correct, in that, there is/was no medical error on Malcolm Grow Medical Center's original radiology finding in 1986 to warrant correction of Hartwell E. Edwards medical records; thus, giving conclusive medical facts that show: No error was found on Malcolm Grow Medical Center's original 1986 chest x-ray report to warrant an injustice. If AFBCMR continue to refuse to release a medical report in support of their denial decision, the plaintiff has come before the U.S. District Court to demand her right to bring this issue before a Federal Jury.

Page 3, paragraph 3 of the defendant's Memorandum Of Law In Support Of Motion To Dismiss Plaintiffs Complaint states: "Although your application was denied because of timeliness, the Board also reviewed the merits of your case. Therefore, if the Board denied my claim for correction of my late husband's medical records because of timeliness, then the plaintiff has come before the U.S. District Court to demand a copy of AFBCMR's reports and/or documents that show the plaintiff under law failed to submit her application for correction of her late husband's medical records under Title 10 of the U.S. Code section 1552 in a timely manner to the Air Force Review Board For Military Records.

Under law, AFBCMR must release a copy of all documents/reports that support their denial decision for untimely submission of the application for a medical records correction, to show, the date the Board determined based on the merits of the claim that the plaintiff knew or had reason to know Malcolm Grow Medical Center omitted material medical data on the 1986 radiology report. The Statue requires the applicant to file with AFBCMR within three years after discovering an error or injustice, given AFBCMR's requirement of exhaustion of all effective administrative remedies; therefore, if AFBCMR is challenging the date the plaintiff said, she discovered Malcolm Grow Medical Center made a material error on the 1986 radiology report, then under law, AFBCMR is required to provide reports/documents which includes the date the Board determined, the plaintiff knew Malcolm Grow Medical Center omitted a finding for nodular densities and/or nipple shadows on her late husband's 1986 radiology report.

Thereby, showing the U.S. District Court, prior to receiving Doctor Freedman's medical report in 1990, the plaintiff already discovered/knew Malcolm Grow Medical Center omitted material medical data, related to her late husband's 1986 radiology report. Based on letter's Department Of the Air Force Review Boards Office sent to the plaintiff, dated 12 April 1993 and 23 June 1993, she finds: Department Of The Air Force Review Boards Office, sent notice to the Department of Veterans Affairs, requesting a copy of my late husband's medical records. Thus, sending me a courtesy copy, to show, the Board's request for my late husband's medical records was sent to the Department Of Veterans Affairs. Therefore, the plaintiff finds: AFBCMR and/or the Review Board sent correspondence to let me know, as soon as, the Review Board received my late husband's medical records from the VA, my application for a medical records correction would be processed. Therefore, my records indicate, prior to the Board's denial decision, the plaintiff never received any correspondence from AFBCMR and/or the Review Board stating: The application the plaintiff submitted, for a medical records correction received on 9 November 1992 had been submitted in an untimely manner. So, if the Board is challenging, the plaintiffs records for the submission of the application for a medical records correction, by stating her application was untimely filed, in essence holding that she discovered, or reasonably could have discovered the alleged error or injustice data, well before the date of discovery she asserted, or at least within three (3) years of her husband's date of death; then in accordance to Statue, the Board is required to release those documents/reports which show the plaintiff did not submit her application for a medical records correction in a timely manner and records that support the Boards finding, to show, the alleged statement's of facts for the asserted date of discovery were not rendered in a capricious manner. Thereby giving the U.S. Court, data/factual material that shows: The plaintiff could have reasonably discovered the alleged error or injustice well before the date she asserts as the discovery date. The law requires supportive facts for all allegations the' Board makes to uphold their denial decision to show: The alleged facts as given by AFBCMR is supported by facts that show, the plaintiffs application was denied because of timeliness. (Emphasis added.)

Therefore the plaintiff has come before the U.S. District Court to demand her substantive rights on the issue of receiving documents/medical reports the defendant has to show: The plaintiff under law did not make application for a medical records correction of her late husband's medical records in a timely manner. If AFBCMR fail to release the documents/medical reports that support AFBCMR's denial decision, **the plaintiff is demanding her right** to take this issue before a jury for denial of the plaintiffs substantive fights, to show under statute the plaintiffs rights as guaranteed by Federal Laws has been and is being denied.

The defendant asserts, Ms. Edwards asked AFBCMR under the FOIA, to render subjective opinions and/or to answer questions for all facts which show the plaintiff knew about her husband's medical condition before the date she asserts as the discovery date. However, under 5 U. S. C. S. section 552 number 22 for - Federal Advisory Committee Act, the Statute states: Under 5 U. S. C. S. App. (10(b) **to make available for public inspection and copying all materials that were made available to or prepared for or by an advisory committee, and, except for materials agency**

reasonably believes to be exempt from disclosure pursuant to FOIA. Therefore, if AFBCMR reasonably believes the medical records/documents they have, showing the plaintiffs request pursuant to FOIA should be denied, thereby, causing the plaintiff to be denied the fight to receive medical records/documents AFBCMR have and used to support their denial decision, for not having, Hartwell E. Edwards 1986 radiology report from Malcolm Grow Medical Center corrected; based on facts that show, AFBCMR found the medical records for the plaintiff's request to be **exempt** from disclosure pursuant to FOIA. Therefore, based on federal statutes, the plaintiff has come before the U.S. District Court to demand under federal law, the reason AFBCMR reasonably believes these medical records are exempt from disclosure and if, AFBCMR cannot or will not give the reason under federal law, to show, they reasonably believe the plaintiff should be denied under FOIA, the request for medical records in support of AFBCMR's denial decision; then the plaintiff is demanding that the U.S. District Court allow the plaintiff to bring this issue before a jury, to show, AFBCMR rendered an unfavorable decision that under Federal Statue may be determined to be arbitrary and capricious.

The defendant has stated in the Memorandum Of Law In Support Of Motion To Dismiss Plaintiffs Complaint, on page 7 (2) paragraph 2 that the United States "is immune from suit..." Therefore, the plaintiff is demanding injunctive relief under the Federal Rules Of Civil Procedure and the Federal Tort Claims Act (28 U. S. C. S. Section 1346), so that, Malcolm Grow Medical Center be held liable for contributory and comparative negligence for the 1986 radiology report found in my husband's medical records, showing the plaintiff relied on Malcolm Grow Medical Center records to be correct when I asked for a medical records review from three (3) different medical physician, showing these physicians relied on the information found in Malcolm Grows Medical Center's System of Records to be accurate when I received each medical evaluation related to the plaintiffs case before the Department Of Veterans Affairs.

The plaintiff is demanding injunctive relief from AFBCMR and the Review Board under the Federal Rules Of Civil Procedure and the Federal Tort Claims Act for damages to the plaintiff, showing under Federal Law, the plaintiffs substantive rights for having her late husband's 1986 radiology report corrected was unjustifiably denied in conjunction with the plaintiff establishing a claim before the VA for death benefits.

The plaintiff is demanding injunctive relief from the Government under the Federal Rules Of Civil Procedure and the Federal Tort Claims Act for damages to MSgt Edwards, for facts in the plaintiffs entitled suit that shows: Malcolm Grow Medical Center was negligent in reading my late husband's 1986 radiology film; thereby omitting medical data on the 1986 radiology report that caused MSgt Edwards additional pain and suffering the year before the medical doctor's at Malcolm Grow Medical Center discovered his cancer in 1987.

Determination of the damage for negligence on the part of the Government and Malcolm Grow Medical Center may have to be determined by jury, because, Doctor Freedman did not evaluate, Malcolm Grow Medical Center's finding for nodular densities in 1978 through 198 1, so, Doctor Freedman's opinion for the 1986 radiology finding is based on the information he had before him in 1990. Showing, Doctor Freedman's based his observation of the nodular density he found, on this one occurrence.

The plaintiff is enclosing a copy of the certified letter sent to AFBCMR to officially notify them of an impending lawsuit based on their denial decision showing the plaintiffs substantive fights for having her late husband's 1986 radiology report corrected are being denied. Therefore, the plaintiff is demanding judgment by the U.S. District Court on all alleged facts, brought forth by the defendant, to show justification for their failure to comply with Federal Laws, governing the correction of my late husband's 1986 radiology report.

Respectfully submitted,

/s/ ____________________
Myra R. Edwards
1120 Windemere Court
Fort Washington, MD 20744
703-806-3447

CERTIFICATION OF SERVICE

I HEREBY CERTIFY, that on this 7th day of August 1996, the Plaintiffs Demand For Judgment is being sent to: the U.S. District Court For The District Of Maryland, Attn: Office of the Clerk at 6500 Cherrywood Lane, Greenbelt, MD 20770 by certified mail, article number P 550 008 659; to: Lynn A. Battaglia, United States Attorney, Attn: Kaye A. Allison, Assistant United States Attorney, Bar No. 09084, at 604 United States Courthouse, 101 West Lombard Street, Baltimore, Maryland 21201 by certified mail, article number P 550 008 655; and to: Department of the Air

Force, AFBCMR at 1535 Command Drive, EE Wing, 3rd Floor, Andrews AFB, Maryland 20331-7002 by first class mail, postage paid by Myra R. Edwards.

Signed:

/s/ ____________________

Myra R. Edwards

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS

Plaintiff,

v. CIVIL ACTION No. DKC-95-3115

DEPARTMENT OF THE
AFBCMR,

Defendant.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, IT IS this 11th day of October, 1996, by the United States District Court for the District of Maryland, ORDERED that:

1. Defendants' motion to dismiss BE, and the same hereby IS, GRANTED in part and DENIED in part; and
2. Plaintiff's FOIA claim and all claims for damages are DISMISSED; and
3. Plaintiff's record correction claim is remanded to AFBCMR for further proceedings; and
4. The Clerk will mail a copy of the foregoing Memorandum Opinion and Order to the Plaintiff and counsel for the Defendant, and close this case.

"s/ ______________________"
Deborah K. Chasanow
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS
Plaintiff,
v. CIVIL ACTION No. DKC-95-3115

DEPARTMENT OF THE
AFBCMR,
Defendant.

MEMORANDUM OPINION

Plaintiff Myra R. Edwards filed a complaint in this court against the Air Force Board for Correction of Military Records ("AFBCMR"), seeking disclosure of certain documents pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. section 552, correction of her late husband's military records, and monetary damages. The Defendant filed a motion to dismiss (Paper no. 11). Plaintiff filed an opposition (Paper no. 12),[1] and Defendant subsequently replied (Paper no. 16). No hearing is deemed necessary, and the court now rules pursuant to Local Rule 105.6.

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[1] The court will treat Plaintiff's "Response to Defendant's Motion to Dismiss Plaintiff's Complaint" as Plaintiff's opposition. Plaintiff has also filed with the court documents entitled "Response for Summary Judgment Based on the Merits of Claim,"; "Plaintiff's Reply Memorandum for Defendant's Response,"; "Request Judicial Review Giving Plaintiff Right to Sue Based on Merits of Claim," and Support of Motion To Dismiss Plaintiff's Complaint, all of which are simply additional oppositions to Defendant's motion to dismiss and therefore are not filed properly under the Local Rules of this court. Because Plaintiff is proceeding pro se, however, the court has nevertheless chosen to give consideration to the arguments contained therein.

I. BACKGROUND

A. STATEMENT OF FACTS

Plaintiff Myra R. Edwards is the widow of Hartwell E. Edwards, a former member of the Air Force. In May 1982, MSgt Edwards retired from active duty. Prior to his retirement, he was given a physical which included a chest –ray in August 1981. He had been given prior chest x-rays in 1979 and 1980. MSgt Edwards was treated in March 1985 for bronchitis, aggravated by his 30 years of smoking, and mild pleuritis. In February 1986, he had a chest x-ray and it was interpreted as normal. In February 1988, MSgt Edwards was diagnosed with lung cancer, and he died as a result of lung cancer on October 11, 1988.

Attempting to establish a service connection in conjunction with a claim to the Veteran's Administration ("VA") for death benefits, Ms. Edwards had three different doctors review her husband's medical records. All felt that the dark spots showing up on his chest x-rays were nipple shadows rather than any sort of pathology. On June 18, 1991, the Board of Veterans' Appeals ruled on Plaintiff's claim for entitlements. The Board found that the fatal lung cancer was not etiologically related to any lung pathology or other pathology present during his service and that she did not submit a well-grounded claim. The Board denied service connection for the cause of death.

By application to the AFBCMR dated October 28, 1992, Ms. Edwards attempted to have certain x-rays and medical diagnoses in MSgt Edwards medical records "corrected," which she thought would, in turn, favorably impact her entitlement to VA benefits. Specifically, Ms. Edwards was concerned that the radiology report accompanying the 1986 chest x-ray made no mention of spots on the lungs which were noted, again as probably being nipple shadows, in a radiology report presented by one of the reviewing doctors in 1990. On her application, Ms. Edwards indicted that the "alleged error or injustice data" was discovered on April 16, 1990, the date of the reviewing doctor's radiology report for the 1986 chest x-ray. The AFBCMR denied the application as untimely filed, in essence holding that she discovered, or reasonably could have discovered the "alleged error or injustice data" well before the date of discovery she asserted, or at least within three years of her husband's death.

On October 21, 1994, Ms. Edwards requested that AFBCMR reconsider their decision. By letter dated November 22, 1994, AFBCMR found that her request did not meet the criteria for reconsideration. The letter further explained that

> "Although your application was denied because of timeliness, the Board also reviewed the merits of your case. The governing statute permits the Board to waive timeliness... in the interest of justice." The Board reviews the merits of untimely applications and, if found to be meritorious, waives timeliness in the interest of justice. In your case, the Board found no error or injustice warranting correction of your late husband's records but elected to decide the case on timeliness".

On November 25, 1994, April 13, 1995, and May 9, 1995, Ms. Edwards submitted requests to the AFBCMR pursuant to FOIA, requesting "all facts that show" and the "documents that state/show" that "[t]he essential medical facts which gave rise to [her] application were known by Myra R. Edwards, long before the asserted date of discovery," and all written documents that support AFBCMR and/or the Review Board's subjective evaluation which denied [her] right to have [her] deceased husbands [sic] 1986 radiology report from Malcolm Grow Medical Center corrected." The Air Force responded to each request, stating that the agency is not required to answer questions, draw conclusions, or render subjective evaluations in response to FOIA requests.

Dissatisfied with the responses provided by the Air Force, Plaintiff filed this action. The Air Force then re-evaluated Plaintiff's request and released two documents which they considered arguably to be responsive to Plaintiff's requests, namely her husband's death certificate and her application to AFBCMR. The AFBCMR advised Ms. Edwards that there are no other documents responsive to her requests.

B. PLAINTIFF'S CLAIMS

The court has spent a great deal of time attempting to discern exactly what relief Plaintiff is seeking. Examining Plaintiff's complaint in conjunction with all subsequent pleading filed by Plaintiff, it seems clear that Plaintiff seeks: (1) disclosure of documents from AFBCMR relevant to AFBCMR's refusal to correct MSgt Edwards' medical records; (2) correction of MSgt Edwards' medical records; (3) application of the "corrected" medical records to Plaintiff's original claim for benefits before the United States Court of Veterans Appeals; and (4) monetary damages for Malcolm Grow Medical Center's "negligence" in 1986 for failing to make note in MSgt Edwards' medical records of the "nodular densities/nipple shadows" appearing on his chest x-ray.

The court wishes to note at the outset that AFBCMR is the only named defendant in this lawsuit. Therefore, the court can address only those of Plaintiff's claims for which AFBCMR has any responsibility, namely the request for **document disclosure and the request for records correction**. Plaintiff's other claims are beyond this court's jurisdiction and certainly beyond any relief that could be obtained from the AFBCMR. Any claims Plaintiff may be asserting for monetary damages will be dismissed.

II. DISCUSSION

A. STANDARD OF REVIEW

The Defendant has moved to dismiss Plaintiff's complaint. Because the court has considered the affidavits and documents submitted by the Defendant, as well as the voluminous documents submitted by Plaintiff in support of the case, the court will treat Defendant's motion as a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. See Fed. R. Civ. P. 12(b).

It is well established that a motion for summary judgment will be granted only if there exists no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56©; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1968); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The moving party bears the burden of showing that there is no genuine issue as to any material fact. Fed. R. Civ. P. 56 (c); Pulliam Inv. Co. v. Cameo Properties, 810 F.2d 1282, 1286 (4th Cir. 1987) (citing Charbonnages de France v. Smith, 597 F.2d 406, 414 (4th Cir. 1979)). If there clearly exist factual issues "that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party," then summary judgment is inappropriate. Anderson, 477 U.S. at 250; see also Pullimam Inv. Co., 810 F.2d at 1286; Morrison v. Nissan Motor Co., 601 F.2d 139, 141 (4th Cir. 1979); Stevens v. Howard D. Johnson Co., 181 F.2d 390, 394 (4th Cir. 1950). In addition, "summary judgment is inappropriate even if merely the inferences to be drawn from the facts are in dispute." United States ex rel.

Milam v. Regents of University of California, 912 F. Supp. 868, 874 (D. Md. 1995); see also Morrison, 601 F.2d at 141 ("Summary judgment under Rule 56, Fed.R.Civ.P. should be granted only where it is perfectly clear that there is no dispute about either the facts of the controversy or the inferences to be drawn from such facts."); Charbonnages, 597 F.2d at 414.

When ruling on a motion for summary judgment, the court must construe the facts alleged in the light most favorable to the party opposing the motion. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962); Gill v. Rollins Protective Servs. Co., 773 F.2d 592, 595 (4th Cir. 1985). A party who bears the burden of proof on a particular claim must factually support each element of his or her claim. "[A] complete failure of proof concerning an essential element... necessarily renders all other facts immaterial." Celotex Corp., 477 U.S. at 323. Thus, on those issues on which the nonmoving party will have the burden of proof, it is his or her responsibility to confront the motion for summary judgment with an affidavit or other similar evidence. Anderson, 477 U.S. at 256.

In Celotex Corp., the Supreme Court stated:

> In cases like the instant one, where the nonmoving party will Bear the burden of proof at trial on a dispositive issue, a summary judgment motion may properly be made in reliance solely on the "pleading, depositions, answers to interrogatories, and admissions on file." Such a motion, whether or not accompanied by affidavits, will be "made and supported as provided in this rule," and Rule 56(e) therefore requires the nonmoving party to go beyond the pleading and by her own affidavits, or by the "depositions, answers to interrogatories, and admissions on file," designate "specific facts showing that there is a genuine issue for trial."

Celotex Corp., 477 U.S. at 324. However, "'a mere scintilla of evidence is not enough to create a fact issue.'" Barwick v. Celotex Corp., 736 F.2d 946, 958-59 (4th Cir. 1984) (quoting Seaoo v. North Carolina Theaters, Inc., 42 F.R.D. 627, 632 (E.D.N.C. 1966), aff'd, 388 F.2d 987 (4th Cir. 1967), cert. Denied, 390 U.S. 959 (1968)). There must be "sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Anderson, 477 U.S. at 249-50 (citations omitted).

B. THE CLAIMS

1. Plaintiff's Request for Disclosure of Documents

Plaintiff apparently seeks to have this court order AFBCMR to disclose to her any documents supporting AFBCMR's decision to deny her request for a record correction, i.e., any documents which show that Plaintiff discovered or reasonably could have discovered the facts giving rise to her request more than three years before she filed her request.

While the FOIA grants district courts jurisdiction to enjoin an agency from improperly withholding agency records, see 5 U.S.C. section 552 (a0 (4) (B), a prerequisite to that jurisdiction is that there must be improper agency action under the statute. As the Supreme Court explained in Kissinger v. Reporters Committee for the Freedom of the Press, 445 U.S. 136, 150 (1980:

> Under 5 U.S.C. section 552 (a) (4) (B) federal jurisdiction is dependent upon a showing that an agency has (1) "improperly"; (2) "withheld"; (3) "agency records." Judicial authority to devise remedies and enjoin agencies can only be invoked, under the jurisdiction grant conferred by 552, if the agency has contravened all three components of this obligation.

In this case, the court finds no improper withholding of agency records. The court has before it affidavits from two Air Force employees who assert that the AFBCMR has turned over all documents which arguably could be responsive to Plaintiff's request. AFBCMR sent Plaintiff a copy of her husband's death certificate (showing the date of his death) and a copy of her application to AFBCMR (showing that her application was dated more than four years after her husband's death). Apparently, what Plaintiff is seeking is a document showing that someone told Plaintiff that her husband's medical records were allegedly in error more than three years before she filed her request for a records correction. This request, however, is completely beside the point given the standard by which AFBCMR determined that Plaintiff's request was not timely filed. The important point, as far as AFBCMR was concerned, was not when Plaintiff **actually** became aware of the relevant facts, but rather when Plaintiff **reasonably could have discovered** the relevant facts.[2] AFBCMR apparently made a judgment that she reasonably could have discovered the relevant information at least at the time her husband died of cancer, and unless they reduced this determination to writing, there would be no document responsive to Plaintiff's FOIA request. While AFBCMR could have explained this clearly to Ms. Edwards (and perhaps they should have, as this entire lawsuit then might have been avoided), such an explanation is not required by FOIA. FOIA is a vehicle for obtaining documents, not explanations, from agencies. Because the court finds that there has been no improper withholding of agency records, Plaintiff's demand for further disclosure of documents will be dismissed.

2. Plaintiff's Request for Records Correction

Plaintiff requests that the AFBCMR "correct" her late husband's medical records in light of the 1990 report of a Dr. Freedman.[3] The Court will treat Plaintiff's claim as a request for review of the AFBCMR's decision to deny Plaintiff's request, pursuant to the Administrative Procedure Act ("APA"). See 5 U.S.C. section 702; Guerrero v. Stone, 970 F.2d 626, 628 (9th Cir. 1992) (concluding that Board for Correction of Military Records is an "agency" within the meaning of the APA and its decisions are therefore subject to review by federal courts under arbitrary and capricious standard).

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[2] As will be discussed **infra**, it may have been an error for AFBCMR to use this test for timeliness. Whether or not this was the correct standard to use, however, has no effect on this court's FOIA analysis.

[3] In his report, Dr. Freedman noted that he observed spots over the lungs on MSgt Edwards' x-ray, and these spots were not noted on the radiology report prepared in 1986 when the x-ray was taken. Spots were noted, however, in radiology reports from earlier x-rays, and in each instance the doctors concluded that they were nipple shadows rather than any sort of growth in the lungs. Dr. Freedman also expressed the opinion that the spots on the 1986 film were nipple shadows. Therefore, even if the radiology report for 1986 were "corrected" to add a reference to these spots believed to be nipple shadows, it is not at all clear to the court that

this would help Plaintiff's claim for benefits from the Veteran's Administration, i.e., the "correction" would seem to do nothing to show a service connection for MSgt Edwards' death. Ms. Edwards is adamant, however, that she wants the records corrected to reflect Dr. Freedman's findings.

AFBCMR concluded that Plaintiff's request for a record correction was not timely because she did not file it within three years after the alleged error or injustice was discovered, or reasonably could have been discovered, as AFBCMR asserts is required by 10 U.S.C. section 1552 and Air Force Regulation 31-3. This very issue was addressed, however, in McFarlane v. Secretary of the Air Force, 867 F. Supp. 409 (E.D. Va. 1994). In McFarlane, Judge Ellis held that it was error for the AFBCMR to import a reasonableness standard into the date of discovery of the error or injustice for purposes of determining whether an application is timely filed. 867 F. Supp. At 411. The Court explained:

> [The AFBCMR] contends that the proper inquiry for time bar purposes is when the alleged error or injustice was **discovered or reasonably could have been discovered**.
>
> ...
>
> Section 1552(b) permits correction of a military record if an application is made "within three years after [the applicant] discovers the error or injustice." The plain language of this statutory provision indicates that the limitations period begins to run upon the applicant's **actual** discovery of the error or injustice. Nowhere does the statutory language suggest that the date of discovery should turn on when a **reasonable** person, rather than the applicant herself, would have found the mistake... Therefore, it was contrary to law for the [AFBCMR] to import a "reasonable person" test into section 1552(b), and the statute of limitations on Ms. McFarlane's claim runs only from the time that she

actually discovered that she was receiving a reduced annuity.

Id. at 411-12 (emphasis in original) (footnote omitted).

In the instant case, Ms. Edwards asserts that she discovered the alleged error in April 1990. She filed her request with AFBCMR in October 1992, and AFBCMR nevertheless ruled that her application was untimely. Therefore, in light of Judge Ellis' ruling in McFarlane, this matter will be remanded to AFBCMR for further proceedings.[4]

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[4] While AFBCMR asserts that it also examined the merits of Ms. Edwards' request and found that no correction was warranted, AFBCMR chose to rest its denial on untimeliness. Furthermore, AFBCMR articulated no reason why Ms. Edwards' request was meritless, and this court therefore has no basis for reviewing this determination.

III. CONCLUSION

For the foregoing reasons, Plaintiff's FOIA claim is DISMISSED. Plaintiff's claim concerning her request for a records correction is remanded to AFBCMR for further proceedings. Plaintiff's other claims, including all claims for damages, are DISMISSED.

"s/ ______________________"
Deborah K. Chasanow
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS
Plaintiff,
v. CIVIL ACTION No. DKC-95-3115

DEPARTMENT OF THE AIR FORCE,
AFBCMR
Defendant.

PLALINTIFFS RESPONSE TO ADDENDUM TO RECORD OF PROCEEDINGS AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS BASED ON U.S. COURT'S ORDER REMANDING CORRECTION OF MILITARY RECORD UNDER TITLE 10 OF U.S. CODE

The Plaintiff is back before the U.S. District Court of Maryland based on the U.S. Courts ORDER on 11 October 1996 that ORDERED the Plaintiffs record of correction claim be remanded to AFBCMR for further proceedings. Based on the Court's ORDER, the Plaintiff received the enclosed Addendum To Record of Proceedings, dated 31 March 1997 from the AFBCMR which under Title 28 of the United States Code Annotated enables District Courts to consider claims against the Government.

Under Federal law, and through admissions of medical records based on defendant's Addendum To Record of Proceedings (Air Force Board For Correction Of Military Records) dated March 31, 1997: It is affirmed that plaintiff's original claim for comparative negligence and contributory negligence is shown as a matter of law with AFBCMR unjustly denying plaintiff rights of monetary damages and unjustly denying rights guaranteed by Federal Law for having the late MSgt Edwards corrected.

RESUME OF CASE:

Based on Defendant's affidavit "Addendum To Record of Proceedings" for admissions by the Government, we now know, the defendant had in its possession medical opinions that were found to be in error in 1986. With facts before the court showing, the original medical admission was used, to deny plaintiffs rights protected and regulated by Federal Law.

In 1989 and 1990, plaintiff took her late husband's medical records to the Department of the Air Force and to a private Pulmonologist. Both doctor's reviewed the late MSgt Edwards medical records as written by Malcolm Grow. Doctor Ruxer with the Department of Air Force state in his letter dated 27 September 1989 that actual radiology film for 15 August 1978 and 13 August 1991 are not available for review. Facts for Doctor Ruxer's evaluation shows he supports each radiologist from Malcolm Grow Medical Center who basically concludes: Each nodular density on all chest x-ray reports for each year through 1981 is most likely a density on the posterior anterior film only and not on the lateral. Thereby showing under Federal Law, Doctor Ruxer gave a conclusive medical finding to show: There is no connection with findings described in 1978 with later abnormalities on the chest x-ray noted in late 1987 and early 1988. Doctor Ruxer states: **There is in the clinical record a chest x-ray report dated 10 February 1986 which reads, "Standard radiographs of the chest in the frontal and lateral projection showed no abnormality of the heart, lungs, mediastinum, or bony thorax. Impression: Normal chest".** Thus, Doctor Ruxer concludes, we find in the medical record of Hartwell E. Edwards an interval film which reflects no abnormalities between the 1978 and 1981 question and the later findings.

In 1990, Doctor Carl Schoenberger, Pulmonologist, reviewed the late MSgt Edwards medical records to find, the deceased developed mild chronic obstructive pulmonary disease (COPD) during his tenure in the military. Wherefore, military medical records from Malcolm Grow Medical Center dated, 4 December 1987 states: Bronchial cytology was negative for malignant cells. However, Malcolm Grow Medical Center's chest x-ray for

26/10/87 states: PA & Lateral Chest x-ray reveals: A right lower lobe infiltrate that radiates toward the right hilum. Showing the remaining lung fields are clear nothing asymmetrical apical thickening noted on the right. Impression: Right lower lobe infiltrate. Recommend radiographic follow-up to rule out possible Mass in the Perihilar Region.

Facts for the plaintiffs case shows: Malcolm Grow Medical Center was aware the deceased developed COPD during his tenure in the military and that in 1986 Malcolm Grow erred on the radiology report given by Doctor Whigham, Maj, USAF, MC who state: "Chest x-ray for February 1986 are standard radiographs of the chest in the frontal and lateral projection showing no abnormality of the heart, lungs, mediastinum or bony thorax. Impression: Normal Chest". Facts for Doctor Matthew Freedman, radiologist, shows: He viewed a series of films from Malcolm Grow United States Air Force Base Hospital to find, "**There is bi-apical pleural thickening. Two 1 cm nodular densities projected over both lower lung fields are consistent with nipple shadows, although films with nipple markers would be valuable in confirming this.**

Plaintiff finds, under Federal Law, admissions of know facts shows: "No finding for nipple markers could be used in 1990 by Doctor Freedman for a conclusive radiology finding in favor of no error being found based on Malcolm Grow's Medical facts for the 1986 issue. The civil record affirms, MSgt Edwards was dead in 1990 when Plaintiff requested Doctor Freedman's medical finding. Facts presented by the AFBCMR in "Addendum To Record Of Proceedings" dated March 31, 1997 is subject to Judicial Review for Arbitrary and Capricious action by AFBCMR, Dodson v. U.S. Government, Department of Army, C.A. Fed. (Fla.) 1993, 988 F.2d 1199.

The radiology report as written by Malcolm Grow Medical Center for the 1986 radiology report shows: Doctor

Freedman's 1990 radiology finding was not apart of Doctor Ruxer or Doctor Schoenberger, medical finding. DKC-95-3115 affirms neither Doctor Ruxer or Schoenberger reported a finding for "Nodular Densities in 1986", upon reviewing the [sic] medical radiology report given by Doctor Whigham, Maj. USAF MAC. The civil record shows: "There is no medical report that shows: **Malcolm Grow evaluated "Nodular Densities in 1986"**, to show, the densities found by Doctor Freedman in 1990 after the death of MSgt Edwards, continued to be nipple shadows that would not lead a chronic condition.

Doctor Schoenberger, December 5, 1990 medical report confirms, the deceased came to Malcolm Grow Medical Center in February 1986, because of cough and bronchitis, including one episode of hemoptysis (coughing up blood) which is the first medical finding for hemoptysis and shows, Doctor Schoenberger concludes: Based on the written [sic] 1986 radiology report from Malcolm Grow that the deceased February 1986 chest x-ray report as written by Doctor Whigham was "Normal".

The civil record affirms Doctor Schoenberger's December 1990 medical report did not conclude: the 1986 radiology report from Malcolm Grow found "Two Nodular Densities" in February 1986 that's consistent with Doctor Freedman' 1990 radiology report, (finding nodular densities not reported in 1986) upon review of duplicate radiology film. Doctor Schoenberger medical report states: In late 1987 he had another episode of coughing up blood, and this time his chest x-ray showed a shadow in the right lower lobe suspicious of cancer.

Malcolm Grow Medical Center's medical report for 4-8-88, Narrative for "Squamous Cell Carcinoma of the Right Lung" states: The patient is a 50 year old black male who developed symptoms compatible with an upper respiratory tract infection in November 1987. However the medical records based on Doctor Schoenbergr's medical report for December 1990 shows: Mr. Edwards developed COPD which stands for chronic obstructive pulmonary disease during his tenure in the military from 1954 through 1981 and that, he had bronchitis, including a episode of hemoptysis (coughing up blood in February 1986).

Wherefore, medical facts found by Doctor Freedman in February 1990 shows, in 1986 Malcolm Grow Medical Center failed to report a finding for "Two 1 cm Nodular Densities, at issue: Malcolm Grow Medical Center did not evaluate nodular densities (there is no record to confirm Malcolm Grow evaluated nodular densities) in the year of occurrence with the issue under federal law being, Major Whigham chose to omit medical facts Ms. Edwards asked the "Board to correct".

Medical facts given in Doctor Schoenberger medical report dated December 1990 shows: in 1987 Mr. Edwards again began to cough up blood and that his right lower lobe was suspicious for cancer. That he underwent a bronchoscopy which failed to confirm a diagnosis of cancer. Mr. Edwards 2 December 1987 Cytology Report confirms the bronchial cytology is negative for a malignant cancer. However, the medical records shows in 1954 through 1981 the deceased developed COPD, and in 1986 the deceased came to Malcolm Grow Medical Center because he was coughing up blood with no diagnosis from Malcolm Grow to confirm a finding for this event. Ms. Edwards complaint is for Malcolm Grow omitting a finding for "Two 1 cm nodular densities, in 1986" with the civil record before the court confirming: Malcolm Grow did not evaluate nodular densities" one year prior to finding cancer that led to death.

Facts before the court, the 1990 finding shows: Malcolm Grow Medical Center's radiology report for the original 1986 radiology film is in error/omitted medical facts or failed to report nodular densities and bi-apical plural thickening in the year of occurrence with Ms. Edwards requesting correction of this error. Thus, the record before the court shows: Malcolm Grow failed to reveal and evaluate "Two 1 cm nodular densities in the year of occurrence". Thus, the issue of law based on Plaintiff's claim, is Malcolm Grow erred when reporting on the original radiology report facts found to be omission based on Doctor Freedman's 1990 radiology finding who read duplicate copies of Malcolm Grow 1986 radiology x-ray film. Medical facts also show, in 1987, Mr.

Edwards came to Malcolm because he was again coughing up blood.

Malcolm Grows 4-8-88 medical narrative report for Squamous Cell Carcinoma of the Right Lung confirm, Malcolm Grow states: The deceased developed an upper respiratory tract infection in November 1987 as if, the November 1987 respiratory tract infection and coughing up blood is a first occurrence. Facts for the 1987 respiratory tract infection reveal, an infiltrate in the right lung. Showing the patient was treated for presumed pneumonia and that the 2 December 1987 Bronchial Cytology was negative for cancer. However, Malcolm Grow admits in their medical analysis that the chest x-ray remained unchanged. February 1986 Hartwell E. Edwards came to Malcolm Grow Medical Center because of cough and bronchitis, including a episode of hemoptysis. Facts before the court shows, the 1986 chest x-ray report written by Doctor Whigham reveals a error was recorded in 1986 for Hartwell E. Edwards Medical Records with facts as a matter of law showing: Doctor Freedman reported finding "Two 1 cm Nodular Densities" not revealed by review of Malcolm Grows Medical Records with the issue being correction of Major Whigham's 1986 omission; and medical facts not present showing the court cannot eliminate the burden of proof against the Government to affirm a chronic respiratory condition was not present in 1986 when Malcolm Grow erred on the original 1986 radiology record.

Malcolm Grow Medical Center's Medical report dated 4-8-88, narrative for Squamous Cell Carcinoma of the Right Lung states: Due to persistent abnormality on Chest x-ray the bronchoscopy was repeated in January 1988, and revealed Squamous Cell Carcinoma.

Based on Malcolm Grow Medical Center's medical records and medical finding from Doctors: Ruxer, Schoenberger and Freedman, I Myra R. Edwards requested a medical records correction to affirm if facts in omission shows Malcolm Grow Medical Center erred in 1986. Request the AFBCMR and the United States Court For the District of Maryland review plaintiff's application for correction of Military Record under the Provisions of Title 10 which clearly states on the continued page of correction, question 8, paragraph 2: I believe a diagnostic error occurred when Malcolm Grow USAF Medical Center read my husband's 1986 chest x-ray. Thereby affirming, I believe the error as written in my late husband's medical records directly relates to the medical findings of Doctor Ruxer and Doctor Schoenberger who gave opinions without knowing Major Whigham omitted medical facts under request for correction. Plaintiff's civil record shows, without correcting the omission, AFBCMR used Doctor Ruxer and Doctor Schoenberger's opinions to deny correction of the [sic] 1986 radiology report written by Doctor Whigham, Maj. USAF, MC. The civil record before the court shows: the [sic] 1986 radiology report from Doctor Whigham remains apart of my late husband's medical records after the U.S. District Court of Maryland "REMANDED CORRECTION" for further proceedings, BY COURT ORDER.

Finding of the plaintiff for Judicial Review before the U.S. District Court of Maryland for Defendants **"Addendum To Record of Proceedings, Air Force Board For Correction Of Military Records"** is as follows:

> The uncorrected medical record of Hartwell E. Edwards was used to deny Plaintiff's rights to a fair and just decision by the Board of Veterans Affairs when the issue of law from 1988-1994 was Dependency Indemnity Compensation based on Malcolm Grows Post Treatment Records. The uncorrected medical records shows AFBCMR violated federal law under Title 10 of the U.S. Code by importing a reasonable person test in the 1994 correction denial used against Plaintiff to affirm denial under statute. The uncorrected medical record shows, AFBCMR arbitrarily and capriciously denied correction of Malcolm Grows 1986 radiology record for the late Hartwell E. Edwards. And finally, the uncorrected medical record before this court shows:

Defendants have **never refuted the medical facts established by Doctor Freedman's 1990 radiology finding** by submitting a medical report from Malcolm Grow to affirm exactly what medical facts are in omission with the issue of law being Major Whigham chose to omit radiographic findings for the late MSgt Edwards 1986 radiology record.

UNDER THE BOARD CONCLUDES:

The plaintiff finds, she presented two medical reports, for the medical analysis and interpretation of Hartwell E. Edwards original 1986 radiology film, which shows a contradiction exists, by the omission of medical facts not diagnosed and/or evaluated in 1986 by Malcolm Grow Medical Center.

The first medical report is from Malcolm Grow Medical Center, and shows in 1986 Doctor Cliff J. Whigham, Maj, USAF, MC states: "CHEST; Standard radiographs of the chest in the frontal and lateral projections show no abnormality of the heart and lungs, mediastinum or bony thorax. Impression: Normal chest".

The second medical report was given by Doctor Matthew Freedman who approximately three years later, read duplicate copies of Malcolm Grow's 1986 radiology x-ray film, to find: The following medical facts in omission; "Two 1 cm nodular densities" not shown by medical record to be diagnosed or analyzed for medical interpretation by Malcolm Grow Medical Center.

The 1986 radiology report from Malcolm Grow Medical Center shows an omission of medical facts not evaluated in 1986 by Malcolm Grow when Hartwell E. Edwards came to the hospital because he was coughing up blood. Wherefore, Plaintiff finds Doctor Whigham's 1986 medical report given for the 1986 radiology record is not consistent with the medical facts reported by Doctor Matthew Freedman, Radiologist from Georgetown University Hospital who admits he examined a series of films from Malcolm Grow United States Air Force Base Hospital for interpretation. Plaintiff finds, Doctor Whigham's 1986 radiology finding is not consistent with past radiology reports from Malcolm

Grow Medical Center as shown by review of the following radiology reports: 15 August, 1978, Doctor Leheam, USAF, MC Radiologist found; "Small nodular densities superimposed over both lower lung fields". 31 March 1978, Doctor Kyong S. Chai, M.D. radiologist found; "Interstitial infiltrate involving the left mid lung field and/or superior segment of the left lower lobe". 18 March 1981 Doctor Ong, Major USAF, NGMC found; "A density in the right lower lung field". And the chest x-ray given 13 August 1981 revealed: "Suggestion of a rounded nodular density in the left mid lung zone".

The medical finding from Doctor Ruxer dated 27 September 1989 was given to the plaintiff to show, Malcolm Grow did not error on the original 1986 chest x-ray report from Doctor Whigham, as related to past radiology findings. The civil record affirms Doctor Ruxer, Chief of Hematology-Oncology Services gave a detailed medical report which analyzed and gave explanation for each instance of nodular densities found/reported by Malcolm Grow Medical Center for the 15 August 1978 radiology report, and the 13 August 1981 radiology report. With no record of facts to affirm a finding of nodular densities in 1986, the civil record shows he states:

> There is in the clinical record a chest x-ray report dated 10 February 1986 which reads, "Standard radiographs of the chest in the frontal and lateral projection showed no abnormality of the chest, heart, lungs, mediastinum, or bony thorax. Impression: Normal Chest".

Plaintiff finds, Doctor Ruxer from Malcolm Grow Medical Center admits on 27 September 1989 that his medical analysis for interpretation of the 1986 radiology report shows: He had difficulty connecting those findings described in 1978 and 1981 with the later abnormalities on the chest x-ray noted in late 1987 and 1988 with facts showing the omission of nodular densities in 1986. Plaintiff's lawsuit shows, Doctor Ruxer based his findings in the late MSgt. Edwards medical records. Facts for the plaintiff shows Doctor Ruxer's 1989 medical analysis is based on medical facts found to be in error; and shows: Doctor Ruxer states, there is no medical connection to findings described in 1978 and 1981 with later abnormalities of the chest x-ray noted in late 1987 and early 1988 based on the clinical record report from Doctor Whigham. Plaintiff approximately one year after receiving Doctor Ruxer report discover in 1990 that Doctor Whigham radiologist omitted a finding for "Two 1 cm nodular densities in 1986". Facts that show Doctor Whigham omitted a finding for nodular densities is documented in Malcolm Grow Medical Center's System of Records for Hartwell E. Edwards radiology report dated 10 February 1986.

Facts for the plaintiff shows, she requested under the provisions of Title 10 of the U.S. Code a medical records correction in 1992, based on Doctor Freedman's medical report which clearly shows: Malcolm Grow and/or Doctor Whigham omitted a finding for nodular densities on the late MSgt Edwards 1986 radiology report. Plaintiff finds AFBCMR is trying to justify the omission of medical data that shows Malcolm Grow erred when omitting medical facts for the [sic] 1986 radiology record. Page 2 of the "Addendum To Record of Proceedings, Air Force Board For Correction of Military Records" dated March 31, 1997, paragraph 1 shows AFBCMR states under "THE BOARD CONCLUDES THAT: Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice, as if, the Government has an inherent right to dismiss a factual medical report, from a qualified medical doctor who read duplicate copies of Malcolm Grow's 1986 radiology film identified as belonging to Malcolm Grow Medical Center. Doctor Freedman's 1990 radiology report was given after the death of Hartwell E. Edwards. Doctor Freedman's 1990 radiology report revealed Major Whigham's 1986 report omitted a medical finding for "Two 1cm nodular densities. Court records shows, the omission was never evaluated in 1986 by Malcolm Grow Medical Center for final determination that the omission does not create an injustice. Doctor Ruxer finding for the 1986 radiology report from Malcolm Grow Medical Center is: "There is in the clinical record dated 10 February 1986 a radiology report that reads, "Standard radiographs of the heart, lung, mediastinum, or bony thorax. Impression: Normal Chest".

Ms. Edwards believes Malcolm Grow and AFBCMR based their correction denial on findings that show bias in favor of Major Whigham rather than review of medical facts found upon review of the actual 1986 x-ray film. The civil record affirms Doctor Ruxer states in the 27 September 1989 letter: **We find in the record a interval film which reflects no abnormalities between the 1978 and 1981 question and the later findings"** with Ms. Edwards civil claim affirming the 1986 interval film is being challenged by Doctor Freedman's 1990 medical finding upon review of Malcolm Grow's 1986 x-ray film. Ms. Edwards finds, Doctor Ruxer's medical report given 27 September 1989 support facts that show a error was recorded in the medical records of Hartwell E. Edwards in 1986. And that, this error is documented in Malcolm Grows System of Records for medical facts received from Major Whigham that differs from Doctor Freedman's 1990 medical finding. Doctor Freedman read duplicate copies of Malcolm Grow's 1986 PA chest x-ray film to find: "Two 1 cm nodular densities not reported or shown to be evaluated in Hartwell E. Edwards medical records for the 1986 issue.

Ms. Edwards finds, Malcolm Grow as a party to the aforementioned lawsuit has not been objective or released medical facts to affirm a medical opinion about what is revealed upon reading the original 1986 radiology film, based on facts in evidence for Doctor Freedman's interpretation upon reading Hartwell E. Edwards 1986 radiology film from Malcolm Grow Medical Center. Doctor Freedman states the PA chest x-ray film reads: "Two 1 cm nodular densities projected over both lower lung fields" with Ms. Edwards concern for facts not diagnosed or interpreted by Malcolm Grow Medical Center in 1986 upon discovering in 1990 Malcolm Grow used the interval clinical record as shown by Doctor Ruxer's letter dated 27 September 1989 affirming: **"There is a interval clinical record report**

dated 10 February 1986, that reflects no abnormalities between the 1978 and 1981 question and the later findings". Ms. Edwards claim, before the U.S. District Court of Maryland (**as shown in the original document page 14, 1st paragraph**) is that:

> "Malcolm Grows 1986 medical record failed to report a finding for "Two 1 cm nodular densities in 1986 when MSgt Hartwell E. Edwards was alive, to affirm a diagnosis that reflects no abnormalities between the 1978 and 1981 question and the later findings".

Ms. Edwards states: Doctor Whigham, Major USAF, MC and Malcolm Grow Medical Center, should have reported a finding in 1986 for "Two 1cm nodular densities projected over both lower lung fields. And that there should be a record to affirm the staff at Malcolm Grow in 1986 analyzed medical data for "Two 1 cm nodular densities". Especially with the issue as a matter of law, being: Doctor Ruxer's medical opinion when he states 27 September 1989 there is a interval report from Maj. Whigham that reflects a normal chest without mentioning any abnormality such as nodular densities/nipple shadows or bi-apical thickening that may have lead to abnormalities developed in 1978 and 1981 and later findings. Ms. Edwards' finds AFBCMR lacks standing under federal law for determination of medical facts in omission with the issue as a matter of law being: Major Whigham chose to omit a finding for nodular densities and bi apical thickening revealed through examination of the late MSgt Edwards chest PA film in 1990 with Plaintiff requesting correction of all medical not reported for the 1986 issue. Ms. Edwards further finds AFBCMR cannot make a final determination that shows/states whether or not a chronic condition existed in 1986 based on opinions unsupported by evidence to affirm, facts for the lateral 1986 chest x-ray film. The civil record affirms AFBCMR has not refuted Doctor Freeman's 1990 interpretation of medical facts found upon reviewing duplicate copies of Malcolm Grow's 1986 radiology x-ray film. The civil record also affirms there is no dispute that Doctor Freedman found "Two 1 cm nodular densities" not reported or evaluated by Malcolm Grow in the year of occurrence. However what is in dispute is whether or not the late MSgt Edwards medical record warrants correction with Defendant's affirming "No injustice data exists," that requires resolution of Plaintiff's lawful request. The civil record shows Doctor Ruxer also failed to report a finding for nodular densities/nipple shadows when evaluating Plaintiff's request. And that he omitted a finding for nodular densities and bi-apical thickening, so again it is not known if Doctor Ruxer knew, Major Whigham chose to omit medical facts for the 1986 issue.

The medical record before Defendant's and United States District Court of Maryland shows: Doctor Freedman through examination of radiology x-ray film in 1990 found Hartwell E. Edwards 1986 PA chest x-ray revealed, "Two 1 cm nodular densities that Plaintiff affirm was not reported in Malcolm Grows records for the late MSgt Edwards.

Medical facts presented by Defendants for the uncorrected 1986 medical record shows a dispute over medical opinions presented by each doctor who reviewed Malcolm Grows uncorrected medical record. First and foremost there is no finding for the corrected 1986 medical record with Plaintiff presenting facts that show Doctor Ruxer's report omitted an unbiased finding (A finding other than Major Whigham's report) to affirm: the [sic] 1986 x-ray record should not be corrected even after Plaintiff discovered, Malcolm Grow omitted a finding for nodular densities/nipple shadows and bi-apical thickening. With the issue as a matter of law being Malcolm Grows uncorrected medical record is used to affirm: Nodular densities/nipple shadows and bi apical thickening, found to be omitted from the 1986 [sic] x-ray report, even if evaluated it would be found that this omission did not or could not have led to the development of cancer prior to 1987.

Ms. Edwards states: on page 15 last paragraph, original document before the Court, (Plaintiff's Response To Addendum To Record) that:

> "Doctor Freedman's 1990 radiology finding for the 1986 radiology film from Malcolm Grow Medical

> Center shows the omission of medical facts not reported in 1986 by Doctor Whigham. And that this omission shows a error was documented by Malcolm Grow Medical Center in 1986 for Hartwell E. Edwards medical records".

The tissue examination of Hartwell E. Edwards on 4 March 1988 following surgery shows Ricky L. Judge, Capt., USAF, MC, staff Pathologist examined GROSS: Specimen that is labeled Gastric Antrum Biopsy, and consists of "Two irregular fragments of gray-tan soft tissue measuring .3 cm which is slightly larger than the measured radiographic finding by Doctor Freedman who reported finding "Two 1 cm nodular densities that were not diagnosed by record of account from Doctor Whigham in 1986.

Facts for Plaintiff's lawsuit shows: AFBCMR have continually refused to correct the error found in accordance to the provisions of Title 10 of the U.S. Code. And that AFBCMR state in the Addendum To Record of Proceedings Air Force Board For Correction Of Military Records on page 3, paragraph © that:

> "AFBCMR found no basis to conclude that a chronic condition existed prior to the member's retirement from the Air Force in 1982".

Ms. Edwards state on the civil record Defendants opinion/statement given on page 3, paragraph ©, "Addendum To Record of Proceedings is non-responsive based on facts in admission for the uncorrected medical record. And that, Ms. Edwards substantive rights are being denied, with facts showing: Doctor Ruxer's 1989 opinion favors the Government upon reviewing Major Whigham's contested 1986 radiology report. Thus, without correcting or noting facts for the omission, Doctor Ruxer conclude: "No abnormalities for findings described in 1978 and 1981 based on the interval 1986 radiology report from Malcolm Grow". The civil record affirms after Doctor Ruxer gave opinion for the 1986 radiology report by concluding "No abnormalities for findings described in 1987 and 1981 based on the interval 1986 Whigham report. Ms. Edwards discovers in 1990 that the Whigham report omitted a finding for nodular densities and omitted an evaluation for any type of abnormality for final determination of facts in dispute (chronic condition while in service that lead to the development of cancer).

Plaintiff's facts before United States District Court of Maryland shows Defendant's have refused to release any medical data for the 1986 radiology report to show: Doctor Whigham did not error. **Ms. Edwards states: on page 16-17, original document before the Court, (Plaintiff's Response To Addendum To Record) that:**

"The only evidence released thus, far is Plaintiff's evidence from Doctors Ruxer, Schoenberger and Freedman, given to affirm Major Whigham erred when reporting, "No abnormalities for the late MSgt Edwards 1986 x-ray report".

Ms. Edwards affirm, the civil record shows Defendants have not released any evidence to show:

"Doctor Whigham **did not omit** a medical finding for "Two 1 cm nodular densities" which was reported by Plaintiff as a medical finding and given to the AFBCMR in 1992 for fact, Plaintiff received from Doctor Freedman who read duplicate copies of Malcolm Grows 1986 PA x-ray film".

Ms. Edwards finds, **the Government's failure to provide medical data to the Court, under 5 USCS to show/affirm: "There is no medical omission (Doctor Whigham 1986 omission is in evidence) violates statute.** And **denies Plaintiff the right to receive records used by the Board to affirm no chronic condition existed prior to 1987** with the issue of law being: **Correction and all monetary relief based on Plaintiff's lawful correction request is denied.**

Ms. Edwards states: on page 17, original document before the Court, (Plaintiff's Response To Addendum To Record) that:

"Violation of statute is reviewable under arbitrary and capricious standard". Plaintiff states: "Freedom of Information Act, authorizes suit against federal agencies, not against individuals or United States itself, and that AFBCMR is a agency of the federal government who is trying to deny admissions of Doctor Freedman's 1990 radiology report as part of my husband's official medical record". Even though facts of the Plaintiffs case shows "AFBCMR have not released any medical records for what Malcolm Grow state is revealed on the original 1986 lateral x-ray film".

Freedom of Information Act, 5 USCS section 552, authorizes relief only against agency and not against individual. Pruitt Electric Co. v. United States Dept. of Labor (1984, ND Tex) 587 F Supp 893, 26 BNA WH Cas 1404, 102 CCH LC paragraph 34613. Ms. Edwards states: Plaintiff's lawsuit before the U.S. Court of Appeals is for AFBCMR's denial decision for correction of my late husband's medical records. And for, AFBCMR's failure to provide medical records which affirm Malcolm Grow did not error in 1986 based on Doctor Freedman's medical finding for duplicate radiology PA chest x-ray film. Doctor Freedman interpreted Malcolm Grow's 1986 PA chest x-ray film finding "Two 1 cm nodular densities and bi-apical thickening with the civil record showing: Ms. Edwards gave Doctors Freedman, Ruxer and Schoenberger's medical reports to AFBCMR as documented medical facts in support of Plaintiff's civil correction claim; requesting correction under the provisions of Title 10 of the U.S. Code.

Ms. Edwards state the civil record shows she is entitled to monetary relief from the Government Agency who erred by denying the lawful correction claim. With facts in admission affirming Hartwell E. Edwards was denied substantive rights (medical records correction) with the issue as a matter of law being: Plaintiff and doctors reviewing Malcolm Grow's medical reports for Veterans service related benefits/compensation from 1988 through 1994 had a right to receive accurate medical data for the finding and evaluation of nodular densities and bi-apical thickening. At issue: "Doctor Freedman found: "Two 1 cm nodular densities projected over both lower lung fields" with the civil record showing Ms. Edwards' is concern that "the omission shows medical facts were not diagnosed or interpreted by Malcolm Grow Medical Center in 1986". With the issue of law being: "Plaintiff discovered in 1990 Malcolm Grow used the interval clinical record" as shown by Doctor Ruxer's letter dated 27 September 1989 affirming: **"There is a interval clinical record a report dated 10 February 1986, that reflects no abnormalities between the 1978 and 1981 question and the later findings".**

PLAINTIFF REQUEST REHEARING BY US DISTRICT COURT FOR MONETARY DAMAGES:

> **Ms. Edwards states: on page 18-19, original document before the Court, (Plaintiff's Response To Addendum To Record) that:** "Plaintiff comes before the U.S. District Court of Maryland to request monetary damages against AFBCMR and Malcolm Grow Medical Center for denial of substantive rights protected by the constitution. And shows under Title 10 of the U.S. Code section 1552 and 5 U.S.C. Section 522(d) that Plaintiff's rights were capriciously denied. With the issue under Federal being: Correction of Major Whigham's 1986 PA and lateral x-ray report omissions".

Plaintiff finds, AFBCMR knew her case was before United States Court of Veterans Affairs with the issue of law being: Correction of Malcolm Grow's Post Treatment medical records for the late MSgt Edwards under the provisions of Title 10 Section 1552 for COVA no. 91-1885 as shown on the application for correction, dated 28 October 1992. Page 2 of the continued section (Application for correction) shows Plaintiff states in the last paragraph that:

> "After receiving letters from each of the above Doctors: Ruxer and Schoenberger, Plaintiff tried to prepare a case for Veterans Benefits. The top of page 3 shows Plaintiff was very perplexed by her husband's February 1986 chest x-ray report from

> Malcolm Grow that shows: In 1986, Mr. Edwards came to Malcolm Grow because he was having serious health problems. The last paragraph on page 3
> states: Doctor Freedman's finding for duplicate 1986 radiology film shows a contradiction of medical facts based on the medical report from Malcolm Grow given for the same radiology finding". Ms. Edwards affirm it is her belief that a diagnostic error occurred in 1986 based on Defendant's admissions, affirming Major Whigham chose to omit radiographic data for the late MSgt Edwards 1986 x-ray report. Doctor Ruxer's medical reports shows he examined Malcolm Grow's radiology reports for 1978 through 1991 and that he could not relate any medical facts for the 1986 report from Major Whigham with any of the past findings, to include Malcolm Grow's finding for cancer in 1987".

Medical facts before the U.S. District Court of Maryland shows Malcolm Grow is comparative negligent for the original 1986 reading when Doctor Whigham chose to omit/failed to report medical facts for "Two 1cm nodular densities and bi-apical thickening. With Plaintiff requesting correction of medical facts not reported by Malcolm Grow for the late MSgt Edwards medical records. Malcolm Grow and AFBCMR are contributory negligent for medical facts that remain uncorrected while knowing: Mr. Edwards was diagnosed as shown by Doctor Schoenberger with mild chronic-obstructive pulmonary disease, prior to 1986 with facts before the Court affirming the late Mr. Edwards came to Malcolm Grow February 1986 because of cough and bronchitis, including a episode of hemoptysis with no medical documentation from Major Whigham to affirm the 1986 x-ray film for this visit shows "Two 1cm nodular densities and bi-apical thickening".

Ms. Edwards request punitive damages for Major Whigham's 1986 omission (choosing to omit medical facts found by review of the 1986 PA x-ray film). With the issue of law being the omission aborted rights sustained by federal law for medical findings by Doctors: Ruxer and Schoenberger who based their medical opinions on the written medical record for Hartwell E. Edwards. The civil record before United States District Court of Maryland shows:

"The uncorrected 1986 medical record written by Doctor Whigham was used as shown by Doctor Ruxer's medical finding in 1989 to affirm: There is in the clinical record a interval radiology report that reads "No abnormality of the chest. Impression Normal Chest". With the issue under federal law being "No medical finding, omission of medical facts/written data in 1986 for "Two 1 cm nodular densities and bi-apical thickening" which shows Defendants are correct when denying Plaintiff correction request in 1994 and 1997.

Ms. Edwards states: on page 20, original document before the Court, (Plaintiff's Response To Addendum To Record) that:

> "Plaintiff request the U.S. District Court "Re-establish" Plaintiff's right to recover monetary damages for a total sum of 8.5 million dollars and that, the enclosed response from the AFBCMR "Addendum To Record of Proceedings" become **apart of Plaintiff's entitled case based on the Court ORDER issued 11 October 1996".** And that, "U.S. District Court provide Judicial Review for arbitrary and capricious actions by the AFBCMR **for all judicial facts that show: Plaintiff provided medical documents that support a claim for omission of medical facts not evaluated by Malcolm Grow in 1986, for diagnosis of a chronic condition that may have lead to the development of cancer".**

Medical facts for 1986 shows, Malcolm Grow erred on the original 1986 radiology report. Thereby showing under Federal Law, AFBCMR violated Federal Regulations based on their denial decision.

Myra L. Edwards
Signature

21 Apr 1997
Date

CERTIFICATION OF SERVICE

I certify that on 21 April 1997, I mailed a complete copy of Defendant's Addendum To Record of Proceedings, filed by AFBCMR and Plaintiffs Response To Defendant's Addendum To Record of Proceedings with attachments is being sent to all parties addressed as shown below with the following additional enclosures: Ruxer and Schoenberger 1980 and 1990 medical evaluations; Plaintiff's application for medical records correction; 4 Dec 87 Gynecologic Cytology report for Pulmonary Medicine, Malcolm Grow USAF Medical Center; 26/10/87 PA and Lateral Chest examination by Alex F. Daley, COL., USAF, MC; Radiation Therapy report from Naval Hospital Bethesda, dated 4-8-88 for Squamous Cell Carcinoma of the right lung; and Tissue Examination, Pathological Report, by Ricky L. Judge, Capt., USAF, MC dated 4 March 88).

Signature

Clerk
United States District Court
Of Maryland
6500 Cherrywood Lane
Greenbelt, MD 20770

Kaye A. Allison Esq.
OFFICE OF THE U.S. ATTORNEY
United States Courthouse
101 West Lombard Street
Baltimore, MD 21201

AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, MD 20762-7002

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS
Plaintiff,
v.   Case Number: DKC-97-1533

DEPARTMENT OF THE AIR FORCE
(AFBCMR) and, MALCOLM GROW
MEDICAL CENTER
ANDREWS AIR FORCE BASE, MD
Defendant.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT OR FOR SUMMARY JUDGMENT

I. STATEMENT OF THE CASE

Plaintiff, Myra R. Edwards ("Ms. Edwards") is the widow of Hartwell E. Edwards, a former member of the United States Air Force. She brings this action against the Defendants, Department of the Air Force, the Air Force Board for Correction of Military Records ("AFBCMR"), and Malcolm Grow Medical Center, Andrews Air Force Base, Maryland ("Malcolm Grow"), pursuant to the Privacy Act, 5 U.S.C. section 552a(d) and 10 U.S.C. section 1552. Ms. Edwards seeks to correct her late husband's medical records.[1]

It also appears that Plaintiff brings this action under the Federal Torts Claim Act ("FTCA"), 28 U.S.C. section 2671, et seq., alleging that Malcolm Grow Medical Center negligently read an x-ray in 1986. Ms. Edwards seeks damages in the amount of $10,500,000.00.

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[1] This is the second suit in which the Plaintiff has sought, inter alia, correction of her late husband's medical records. In Edwards v. Dept of the Air Force, DKC-95-3115, this court dismissed her FOIA claim but remanded the

record correction claim to the Air Force for further proceedings. This suit follows from the remand

II. STATEMENT OF FACTS

Master Sergeant ("MSgt") Hartwell Edwards retired from active duty in May 1982, after 23 years of service. Prior to his retirement, he was given a physical examination, which included a chest x-ray in August 1981. MSgt Edwards had other chest x-rays prior to those he received as part of his "retirement physical." (See Exhibit 1, Transcript of the Administrative Record relative to the Air Force case of Hartwell E. Edwards ("TR"); pp. 59-60).

MSgt Edwards was treated in March 1985 for bronchitis, aggravated by his 30 years of smoking, and mild pleuritis. In February 1986, he had a chest x-ray and it "was interpreted as normal, with no abnormality of the lungs." (TR 60).

MSgt Edwards was found to have a right lower lobe infiltrate in October 1987. Records of subsequent treatment show that in a January 1988 chest x-ray examination, MSgt Edwards' right lower lobe process was found to appear strongly suspicious for malignancy" and in February 1988, he was diagnosed with cancer. In March 1988, a right pneumonectomy was accomplished. He died on October 11, 1988, due to lung cancer. (TR 60-61).

Attempting to establish a service connection in conjunction with a claim to the Veterans' Administration ("VA") for death benefits, Ms. Edwards had three different doctors review her husband's medical records. All opined that the projections on the earlier x-rays were nipple shadows. (TR 79-80, 81-83, 87).

On June 18, 1991, the Board of Veterans' Appeals ruled on Plaintiff's claim for entitlement. Ms. Edwards argued that her husband's death was service-connected. The Board found that the fatal lung cancer was not etiologically related to any lung pathology or other pathology present during his service and that she did not submit a well-grounded claim. The Board denied service connection for the cause of death. (TR. 56-64).

By application dated October 28, 1992, Ms. Edwards attempted to have certain x-rays and medical diagnoses in MSgt Edwards' medical records "corrected" by the AFBCMR, which would, in turn, favorably impact her entitlements to VA benefits. (TR. 71-72). On that application, Ms. Edwards indicated that the "alleged error or injustice data" was discovered on April 16, 1990, by Dr. Freeman (TR 71, block 11.a, 75).[2] The AFBCMR denied her application as untimely filed, in essence holding that she discovered, or reasonably could have discovered the "alleged error or injustice data" well before the date of discovery she asserted, or, at least within 3 years of her husband's date of death. (TR. 70). On October 21, 1994, Ms. Edwards requested that the AFBCMR reconsider their decision (TR. 32). By letter dated November 22, 1994, the AFBCMR found that her request did not meet the criterion for reconsideration. The AFBCMR pointed out to Ms. Edwards, however, that:

> "Although your application was denied because of timeliness, the Board also reviewed the merits of your case. The governing statutes, permits the Board to waive timeliness... 'in the interest of justice'. The Board reviews the merits of untimely applications and, if found to be meritorious, waives timeliness in the interest of justice. **In your case, the Board found no error or injustice warranting correction of your late husband's records but elected to decide the case on timeliness."** (Emphasis added).

(TR. 30-31).

Despite this notice to Ms. Edwards that her application was, in fact, reviewed on its merits, she asserted in her first suit that she did not know of the "error" in the x-ray until Dr. Freedman provided his opinion of the x-ray in April 1990. This court ruled that it was error for the AFBCMR to import a reasonableness standard in to the date of discovery of the error or injustice for purposes of determining whether an application is timely filed. Ms. Edward's claim concerning her request for a records correction was remanded to the AFBCMR for further proceedings. The AFBCMR again considered Ms. Edwards' claims. On March 31, 1997, the AFBCMR found that based on the evidence before us, we find no basis to conclude that a chronic condition existed prior to (MSgt Edwards') retirement from the Air Force in 1982. Therefore, we are not persuaded that the applicant's husband was unfit at the time of his retirement and do not believe that he should have been retired by reason of physical disability. Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

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[2] Plaintiff's characterization is wide of the mark since even she quotes Dr. Freedman as opining: "Two 1 cm nodular densities projected over both lower lung fields are consistent with nipple shadows, although film with nipple markers would be valuable in confirming this." Tr. 75).

(Exhibit 2)

Since the AFBCMR found no error in her husband's medical records, there was no basis for awarding any relief.

I. ARGUMENT

A. Plaintiff's Complaint Should Be Dismissed For Failure to State A Claim Upon Which Relief can be Granted

1. Plaintiff Cannot Establish That the AFBCMR's Decision Was Arbitrary, Capricious, Contrary to Law or Not Supported by Substantial Evidence.

a. Standard of Review

1. This court's standard of review is governed by the Administrative Procedures Act, 5 U.S.C. section 701 et. Seq. A reviewing court shall not set aside an agency decision unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. section 706; American

> Horse Protection Association Inc. v. Yeutter, 917 F.2d 594, 596 (D.C. Cir. 1990); National Treasury Employees Union v. Horner, 854 F.2d 490, 498 (D.C. Cir. 1988). This standard is highly deferential and presumes the validity of agency action. National Treasury Employees Union, 854 F.2d at 498; American Horse Protection Association, Inc., 917 F.2d at 596. In reviewing agency action, the Court must avoid substituting its judgment for that of the agency. Competitive Enterprise Institute v. NHTSA, 901 F.2d 107, 120 (D.C. Cir. 1990). Rather the Court should determine "whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." Michigan Consolidated Gas Co. v. F.E.R.C, 883 F2.d 117, 121 (D.C. Cir. 1989), cert. Denied, 494 U.S. 1079 (1990). In the absence of a showing of material error, Plaintiff is bound by the decision of the AFBCMR to deny relief in his case. Wronke v. Marsh, 787 F.2d 1569 (Fed. Cir. 1986), cert. Denied, 479 U.S. 853 (1986); Sanders v. United States, 594 F.2d 804 (Ct. Cl. 1979).

In an action for judicial review of the decision of an administrative agency, it is axiomatic that the Court does not hear new evidence, but reviews the decision of the agency based on the administrative record developed before the agency. The Supreme Court laid down the general rule in Camp v. Pitts, 411 U.S. 138 (1973), where it was stated that "the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court." Id. At 412. See also Florida Power & Light Co. v. Lorion, 470 I.S. 729, 743-44 (1985); Corning Savings & Loan Association v. Federal Home Loan Bank Board, 736 F.2d 479, 480 (8th Cir. 1984). The Courts of Appeal have uniformly applied this general principle to the specific situation presented here, that is, judicial review of decisions of the various correction boards of the armed services. See, e.g. Dougherty v. Board for Correction of Naval Records, 784 F.2d 499, 501 (3d Cir.

1986) ("the district court must base its decision on an administrative record... [T]he case involves not a succession of witnesses who will seek to remember what happened nearly thirty years ago but, rather, an analysis of an administrative record to determine if a particular result is an arbitrary and capricious conclusion"); Geyen v. Marsh, 775 F.2d 1303, 1309 (5th Cir. 1985), rehearing den., 782 F.2d 1351 (5th Cir. 1986) ("Review of agency action... is limited to the record before the agency at the time of its decision.").

As this is a record review case, the content of the record developed before the AFBCMR is the only material fact in issue and there is no dispute over the content of that record. Accordingly, Plaintiff has failed to state a claim upon which relief can be granted, and her complaint should be dismissed.

b. Summary Judgment is Appropriate Because There Are No Material Facts In Dispute

Summary judgment is appropriate where there are no genuine disputes as to any material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Mingus Constructors, Inc. v. United States, 812 F.2d 1387 (Fed. Cir. 1987). "The burden on the moving party may be discharged by 'showing' – that is, pointing out to the [Court] – that there is an absence of evidence to support the non-moving party's case." Sweats Fashions, Inc. v. Pannill Knitting Company, Inc., 833 F.2d 1560, 1563 (Fed. Cir. 1987), quoting Celotex Corp. v. Catrett, 477 U.S. 317 (1986). (emphasis in original). Once the moving party has met is burden, the non-movant "must proffer countering evidence to create a genuine factual dispute." Sweats Fashions, Inc., 833 F.2d at 1562. The non-movant must, therefore, present sufficient evidence of the existence of a dispute as to material fact such that that the trier of fact could reasonably find in favor of the non-movant. Maki v. United States, 13 Cl. Ct. 779, 781 (1987), aff'd, 852 F.2d 1293 (Fed. Cir.), cert. Denied, 488 U.S. 943 (1988). "The non-movant may not rest on conclusory pleadings, but under Rule 56, must set out, usually in an affidavit by one with knowledge of specific facts, what specific evidence could be offered at trial." Pure Gold, Inc. v. Syntex (U.S.A.), Inc., 739 F.2d 624, 526-627 (Fed. Cir. 1984).

In this case, there are no genuine issues of material fact in dispute, which would prevent the court from ruling upon the Defendant's motion for summary judgment.

2. The AFBCMR's Decision Not to Correct MSgt Edwards' Medical Records Was Not Arbitrary and Capricious

Plaintiff presented no evidence to the Board to support her claim that her husband's medical records contain an error or injustice that should be corrected.

The Plaintiff's main contention is that her husband's 1986 chest x-ray should be corrected to indicate the presence of "nodular densities/nipple shadows." She contends that since the 1978, 1980, and 1981 x-rays indicate the presence of "nodular densities/nipple shadows," and the 1986 x-ray does not, then the 1986 x-ray must be in error.

As noted in the AFBCMR opinion, in an x-ray taken from a posterior or anterior view (front or back), the nipple will cast a shadow onto the x-ray. An x-ray taken from a lateral view (side) will not have a nipple shadow. In all of the x-rays taken in 1978, 1980, 1991, and 1986, the nodular densities noted on posterior or anterior ("PA") view x-rays were all attributed to nipple shadows by every doctor who read the x-rays. All of the doctors who have read the x-rays since MSgt Edwards' death have also attributed the nodular densities seen on these on these x-rays to nipple shadows.

In the x-ray report for the 1986 x-ray, Major Cliff J. Whigham wrote in his radiographic report:

> CHEST: Standard radiographs of the chest in the frontal and lateral projections show no abnormality of the

heart, lungs, mediastinum or bony thorax. IMPRESSION: NORMAL CHEST.

The fact that this doctor chose not to include a comment about nipple shadows does not make the records in error or inaccurate. The Plaintiff has not provided any evidence to show that Major Whigham's report is in any way inaccurate or in error. The fact that doctors write x-ray reports differently does not make them in error or create an injustice from which a Plaintiff is entitled to relief. Other than pointing out that Major Whigham does not write his report the same way as the other doctors and note the nipple shadows, Plaintiff has not presented any evidence of an error or injustice which would require this court to grant relief.

3. The Court Lacks Jurisdiction Over the FTCA Aspects of Plaintiff's Complaint

It is well settled that the United States as a sovereign is immune from suit unless it has consented to be sued. United States v. Sherwood, 312 U.S. 584, 586 (1941); Melo v. United States, 505 F.2d 1026, 1028 (8th Cir. 1974). The United States waived its immunity to a limited number of suits through the passage of the FTCA. In waiving its immunity, the United States may define the conditions under which actions are permitted against it. United States v. Kubrick, 444 U.S. 133 (1979).

Title 28 of the United States Code, Chapter 171 delineates the procedure for tort claims against the United States. Section 2675(a) of this chapter governs the filing of administrative claims and provides, in pertinent part:

> An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail.

28 U.S.C. section 2675(a).

"Section 2675 clearly makes the filing of an administrative claim a mandatory condition precedent to the filing of a civil action against the United States for damages arising from the negligent act or omission of any Government employee acting within the scope of his employment." Melo, 505 F..2d at 1028. See also Brackin v. United States, 913 F.2d 858, 859 (11th Cir. 1990) (Court found that Plaintiff, a joint owner of a farm, had failed to exhaust her administrative remedies pursuant to 28 U.S.C. section 2675(a) and that her FTCA suit should be dismissed. Plaintiff had failed to file a separate administrative tort claim in this matter and had never joined in the administrative tort claim filed by her co-worker.) There can be no waiver of this jurisdiction requirement, Blain v. United States, 552 F.2d 289, 291 (9th Cir. 1977), and the procedures set forth in section 2675(a) must be strictly construed. Keene Corp v. United States, 700 F.2d 836, 841 (2nd Cir), cert. Denied, 464 U.S. (1983).

Since Section 2675 is jurisdictional in nature, a court must determine what constitutes a sufficient claim. The prevailing view among the courts "is that the jurisdictional requirement of minimum notice is satisfied by (1) a written statement sufficiently describing the injury to enable the agency to begin its own investigation, and a (2) sum certain damage claim." Burns v. United States, 764 F.2d 722, 724 (9th Cir. 1985). "[T]he procedure for administrative exhaustion established under the FTCA clearly presupposes the existence of an identifiable claimant or claimant with whom the government can negotiate settlement on the basis of the sum certain stated in the administrative claim." Lunsford v. United States, 570 F.2d 221, 225 (8th Cir. 1977).

In the instant case, Plaintiff failed to comply with the jurisdictional prerequisite of Section 2675(a) because she failed to fine an individual administrative claim. See Exhibit 3, Declaration of Daniel P. Hass, dated September 24, 1997. Accordingly, failure to file an administrative claim prior to filing his lawsuit against the United States is a fatal jurisdictional defect and he cannot maintain suit against the United States.

IV. CONCLUSION

Based on the foregoing reasons, Defendant is entitled to judgment as a matter of law.

Respectively submitted,

Lynne A. Battaglia
United States Attorney

By: "s/ __________________________"
Larry D. Adams
Assistant United States Attorney
Bar No. 03118
6625 United States Courthouse
101 West Lombard Street
Baltimore, Maryland 21201-2692
410/209-4800

CERTIFICATION OF SERVICE

I hereby certify that on this 22nd day of October, 1997, a copy of the foregoing was mailed first class, postage prepaid to Myra R. Edwards, Plaintiff pro se, 1120 Windemere Court, Fort Washington, Maryland 20744.

"s/ __________________________"
Larry D. Adams
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

Myra R. Edwards Civil Case No. DKC-97-1533
Plaintiff
vs.

DEPARTMENT OF THE AIR FORCE
AFBCMR
&
MALCOLM GROW USAF MEDICAL CENTER
Defendants

PLAINTIFF'S CONTINUOUS MOTION FOR DENIAL OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND MOTION FOR TRIAL BASED ON MERITS OF THE CLAIM

The plaintiff is before this court to state, under Rule 56, she requested on 9 October 1997, as a "Matter of Law" that the Honorable Court deny the defendant's request for Summary Judgment.

The plaintiff states, on 14 April 1998 she moved for Judgment. The Plaintiff affirms she moved for Judgment after not hearing from the Court for six-months. See "Plaintiff Moves For Judgment After 6-Months - AFBCMR and Malcolm Grow Have Not Denied Material Facts Of The Civil Case". After moving for Judgment the Motions for Proceedings shows: This Court have not ruled to show there is a genuine issue as to any material fact or that the moving party is entitled to judgment as a matter of law. Facts before this court are the Defendants state "Summary Judgment is Appropriate Because There Are No Material Facts in Dispute". See Defendant's Motion To Dismiss Or In the Alternative, For Summary Judgment, dated 6 October 1997.

Finally, on 30 June 1998 Plaintiff sent to this Court an "Addendum To Plaintiffs Request for Judgment".

After sending these MOTIONS to deny defendants Motion for Summary Judgment, facts before this Court are, this Court have not ruled on any of the MOTIONS pending in this case.

The Plaintiff finds, the material facts for Judgment by this court, remains in-part as stated in this Court's "Memorandum Opinion" given 11 October 1996. See civil case number 95-3115.

Facts for Judgment are: The civil case before this court shows, the Plaintiff received duplicate 1986 radiology film from Malcolm Grow in 1990 after Mr. Edwards death. The civil record shows the plaintiff gave the duplicated radiology film to Doctor Freedman in 1990. Doctor Freedman's 1990 radiology finding for the 1986 radiology film from Malcolm Grow clearly shows AFBCMR and Malcolm Grow omitted material medical facts that should have not been omitted from the original 1986 radiology report from Malcolm Grow USAF Medical Center. The Plaintiff is asking this court to find, the medical facts presented by Doctor Freedman in 1990 should be apart of Mr. Edwards medical records. And that, the errors reported to the AFBCMR 22 October 1992 should have been corrected based on medical facts being adjudicated by the Board of Veterans' Affairs. The Plaintiff affirms under the Provisions of Title 10, of the U.S. Code, Section 1552, she submitted the application for military records correction to AFBCMR 22 October 1992.

The Plaintiff affirms the medical facts revealed in 1990 by Doctor Freeman supports her claim before this court and shows Malcolm Grow omitted material medical facts that should have been recorded in the medical records, the year Malcolm Grow took the original 1986 x-rays. The Plaintiff state her case before this court shows material medical facts for the 1986 issue are still not apart of Mr. Edwards medical records. See Defendant's entry 52-53 for Doctor Freedman's medical finding. The Plaintiff affirms after requesting the medical correction for the 1986 issue, AFBCMR denied correction by continuously stating, **"You asserted a date of discovery of April 16, 1990, which would if correct, make the application timely; however, the essential facts which gave rise to the application were known by you long before the asserted date of discovery. Knowledge of those** facts constituted the date of discovery and the beginning of the three-year period for filing. Thus the AFBCMR **denied your application as untimely".** The civil record clearly shows, there are no facts that conclude the Plaintiff had knowledge of the essential facts prior to receiving Doctor Freedman's 1990 radiology finding for the 1986 issue. Also the Plaintiff affirms, she had no knowledge of the 1986 error before receiving Doctor Freedman's 1990 radiology report. **However, facts before this Court are:** AFBCMR is continually denying the Plaintiffs request for a medical records correction as untimely. See AFBCMR letter dated 22 November 1994 in case DKC-95-3115 and DKC-97-1533.

The plaintiff affirms she asked the U.S. District Court Of Maryland for a decision on whether or not Malcolm Grow and/or the AFBCMR omitted a finding for nodular densities based on the admissions by AFBCMR for the 1986 issue. See "As A Matter Of Law Plaintiff Request U.S. District Court To Deny Defendant's Request For Summary Judgment", page 4, paragraph 2 for Plaintiffs request for a decision.

The Plaintiff's MOTION, "As A Matter of Law", on page 1, paragraph 1, also states, the Defendant violated statutes that govern her request for a medical records correction. Facts for the medical records correction are based on Doctor Freedman's medical finding for the 1986 issue. The Plaintiff affirms, knowledge of the error was given to her, when Doctor Freedman gave his 1990 medical finding for the 1986 issue. **Facts before this court are:** The U.S. District Court for the District Of Maryland have not ruled to show the Defendants violated statutes that govern Plaintiffs request for the medical records correction. Nor have this court ruled on McFarlane v. Secretary of the Air Force, to show this Court is upholding Judge Ellis finding for error based on AFBCMR denial decision for the 1986 issue. See Court's Memorandum Opinion, case DKC-95-3115, page 11 paragraph 2 for Judge Ellis' finding.

Facts for Judgment are: AFBCMR and Malcolm Grow Medical Center denied the Plaintiffs request for the medical records correction from October 1992 through this courts proceeding. This court remanded proceeding to AFBCMR based on the Plaintiff's original claim in 1995. See ORDER for case DKC-95-3115 issued 11th day of October 1996. After the U.S. District Court remanded this proceeding back to AFBCMR, they still refused to correct the 1986 issue by stating the request for correction is untimely. See admissions for AFBCMR's denial decision at (TR.70). The Court's "Memorandum Opinion" on page 11 states: McFarlane v. Secretary of the Air Force, 867 F. Supp. 409 (E.D. Va. 1994). In McFarlane, Judge Ellis held that it was error for the AFBCMR to import a reasonableness standard into the date of discovery of the error or injustice for purpose of determining whether or not an application is timely filed. 867 F. Supp. At 411. The Plaintiff is before this court to request the U.S. Court of Maryland uphold Judge Ellis finding, to show the civil record shows the Plaintiff discovered the material error, 16 April 1990 after receiving Doctor Freedman's medical finding.

This Court's Memorandum Opinion on page 2, I. Background, A. Statement of Facts states: On June 18, 1991, the Board of Veterans' Appeals ruled on Plaintiffs claim for entitlement. The Board found that the fatal lung cancer was not etiologically related to any lung pathology or other pathology preset during his service and that she did not submit a well-grounded claim., The Board denied service connection for the cause of death. The Plaintiff is before this Court to ask, "As a matter of law", whether or not, the Department of the Air Force is required to correct medical records that omitted medical facts that was later found not to be on, but revealed by, reading duplicate copies of the 1986 radiology film? Especially when **facts for the omission relates to:** The medical records were used by the Veterans' Administration, to show the fatal lung cancer was not etiologically related to any lung pathology or other pathology present during his service.

Facts before this court shows Doctor Freedman finding for nipple shadows is not conclusive. Doctor Freedman's finding for the 1986 issue shows he states, "Although films with nipple markers would be valuable in confirming this (meaning the 1986 issue); the argument before this Court is Malcolm Grow omitted a finding for nodular densities in 1986 for determination of whether or not the nodulars in 1986 represent nipple shadows.

The AFBCMR's admissions for the lateral view is: The lateral view taken on the same date (of the PA view) did not reveal nodular densities/nipple shadows. However, the civil record shows the doctors who reviewed the medical records for the Plaintiff, did not confirm a finding for the lateral view, to show in 1986, the nodulars found by Doctor Freedman are/were nipple shadows.

AFBCMR's admissions/findings for the 1986 issue before this court are: ..."We do not find it unusual that Malcolm Grow Medical Center did not note the presence of nodular densities/nipple shadows on the PA view of the 1986 x-ray film since the x-ray film taken on the same date for the lateral view did not reveal nodular densities/nipple shadows.

Doctor's Ruxer and Schoenberger medical finding for relative facts before this court shows these doctors did not state, the medical records for the 1986 issue reveals a finding that Malcolm Grow USAF Medical Center found nodular densities/nipple shadows on the PA view of the 1986 x-ray film. See Defendant's entry for Doctor Ruxer finding 54-55, and Doctor Schoenberger finding 81-83.

Request this Court enter Judgment for plaintiffs request to receive duplicate copies of the 1986 radiology film (PA and Lateral Views) based on AFBCMR's admissions before this Court. The Plaintiff stated in "As A Matter of Law To Deny Defendant's Request For Summary Judgment", on page 5, that the Government Agency knew of two radiology findings not reported in the medical records of Hartwell E. Edwards in 1986. And that these radiology reports shows a finding for (1) the PA radiology view and (2) the lateral radiology view. Thereby showing the Plaintiff is being denied the right to receive material facts in the possession of Malcolm Grow and the AFBCMR for conclusions on the civil record with no proof under law to show, the Plaintiffs rights are not being violated.

On page 4, paragraph 4 of "As A Matter Of Law", the Plaintiff asked the Court, "whether or not Malcolm Grow and the AFBCMR under law were required to reveal a medical finding for the PA and lateral radiology film taken on the same date; based on facts before this Court showing in 1989 the Plaintiff requested a medical review from Doctor Ruxer, Chief, Hematology-Oncology Services at Malcolm Grow USAF, MAC.

Doctor Ruxer states on page 2 of his letter dated 27 September 1989, paragraph 2, ..."I have difficulty connecting those findings in 1978, and 1981 with later abnormalities on the chest x-ray noted in late 1987 and early 1988. **"There is in the clinical record a chest x-ray report dated 10 February 1986 which reads: Standard radiographs of the chest in the frontal and lateral projections showed NO abnormality of the heart, lungs, mediastinum or bony thorax. Impression: Normal chest."** See Defendant's entry 54-55 for Doctor Ruxer's finding.

Doctor Freedman's radiology finding shows abnormalities were on the original 1986 radiology film. Even though based on Doctor Freedman findings, Malcolm Grow's medical report is shown to have omitted a finding for two 1cm nodular densities over both lower lung fields are consistent with nipple shadows, although film with nipple markers would be valuable in confirming this. Doctor Freedman's finding for the 1986 radiology issue, supports Doctor Schoenberger's medical finding when Doctor Freedman states in 1990 that the 1986 x-ray reveals: **"There is bi-apical pleural thickening. And, there is a diffuse interstitial pattern which is most prominent at the bases, and is consistent with mild interstitial fibrosis.** See Defendant's entry 52-53 for Doctor Freedman's medical finding. Doctor Schoenberger medical finding shows the late Mr. Edwards developed mild chronic obstructive pulmonary disease (COPD) during his tenure in the military; and that, in February 1986 he went to Malcolm Grow USAF hospital because of cough and bronchitis, including one episode of hemoptysis (coughing up blood). See Defendant's entry 81-83 for Doctor Schoenberger's medical finding. The Plaintiff affirms the medical facts presented by these doctors shows a genuine dispute for what is or was revealed in 1986 based on AFBCMR's reporting of the facts for the deceased. See "As A Matter Of Law Plaintiff Request Denial Of Defendant's Request For Summary Judgment", page 8: **"Doctor Freedman's medical report before this Court, is for evidence already on the record, to show, Malcolm Grow omitted material facts that under law gave rise to a genuine dispute for what is or was revealed in 1986 based on AFBCMR's reporting of the facts before this court for Hartwell E. Edwards 1986 PA and lateral chest x-ray film".**

Plaintiff request ORDER OF JUDGMENT based on the merits of the case before this Court. And that, the Honorable Court enter JUDGMENT for trial, for issues in dispute, to show there has been no settlement for redress in the amount of 1.5M dollars.

Respectfully submitted,

Myra R. Edwards

MYRA R. EDWARDS
PRO SE REPRESENTATIVE
1120 Windemere Court
Fort Washington, MD 20744
703-806-3425

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 14th day of August 1998, a copy of the foregoing "Motion to

Continuously Request Denial Of Defendant's Motion For Summary Judgment And Request For Trial" is being sent to: the United States District Court of Maryland, Office of the Clerk, at 6500 Cherrywood Lane in Greenbelt, MD 20770; Department of the Air Force, AFBCMR at 1535 Command Drive, EE Wing, 3rd Floor, Andrews AFB, Maryland 20331-7002; Lynne A, Battaglia, United States Attorney, Attn: Kaye A. Allison Assistant United States Attorney, at 604 United States Courthouse, 101 West Lombard Street, Baltimore, Maryland 21201; Honorable Janet Reno, Attorney General, Department Of Justice at 10th and Constitution Avenues, N.W., Washington, DC 20530; and Department of the Air Force Legal Office, Malcolm Grow USAF Medical Center (MAC), Andrews AFB, MD 20331-5300 by first class mail, postage paid by Myra R. Edwards.

Signed: Myra R. Edwards

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS

v. CIVIL ACTION No. DKC-97-1533

DEPARTMENT OF THE
AIR FORCE, et al.

ORDER

In accordance with the accompanying Memorandum Opinion, IT IS this 22nd day of September, 1998, by the United States District Court for the District of Maryland, ORDERED that:

1. Defendants' Motion for Summary Judgment BE, and hereby is GRANTED;
2. Judgment BE, and the same hereby is, ENTERED in favor of Defendants and against Plaintiff; and
3. The clerk is directed to mail a copy of this Order and the accompanying Memorandum Opinion to the parties, or if represented by counsel, to counsel for the parties and CLOSE this case.

"s/ ______________________"
Deborah K. Chasanow
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS
v. CIVIL ACTION No. DKC-97-1533
DEPARTMENT OF THE
AIR FORCE, et al.

MEMORANDUM OPINION

Plaintiff Myra R. Edwards has filed her second complaint with this Court seeking correction of her late husband's military records and damages allegedly resulting from the Air Force's refusal to correct her husband's records and its refusal to respond to a FOIA request. The Defendants have filed a motion to dismiss for failure to state a claim or, in the alternative, for summary judgment. Defendants are correct that this case presents no disputes of material fact and that they are entitled to judgment as a matter of law. Accordingly, the Court grants Defendants' motion for summary judgment. No hearing is necessary and the Court now rules pursuant to Local Rule 105.6.

Summary Judgment Standard

It is well established that a motion for summary judgment will be granted only if there exists no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56©; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In other words, if there clearly exists factual issues "that properly can be resolved only by a finder of the fact because they may reasonably be resolved in favor of either party," then summary judgment is inappropriate. Anderson, 477 U.S. at 250; see also Pulliam Inv. Co. v. Camero Properties, 810 F.2d 1282, 1286 (4th Cir. 1979); Stevens v. Howard D. Johnson Co., 181 F.2d 390, 394 (4th Cir. 1950). The moving party bears the burden of showing that there is no genuine issue of material fact. Fed. R. Civ. P. 56©; Pulliam, 810 F.2d at 128 (citing Charbonnages de France v. Smith, 597 F.2d 406, 414 (4th Cir 1979).

When ruling on a motion for summary judgment, the court must construe the facts alleged in the light most favorable to the party opposing the motion. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962); Gill v. Rollins Protective Servs. Co., 773 F.2d 592,.595 (4th Cir. 1985). A party who bears the burden of proof on a particular claim must factually support each element of his or her claim. "[A] complete failure of proof concerning an essential element . . . necessarily renders all other facts immaterial." Celotex Corp., 477 U.S. at 323. Thus, on those issues on which the nonmoving party will have the burden of proof, it is his or her responsibility to confront the motion for summary judgment with an affidavit or other similar evidence. Anderson, 477 U.S. at 256. Celotex Corp., the Supreme Court stated:

> In cases like the instant one, where the nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary judgment motion may properly be made in reliance solely on the "pleadings, depositions, answers to interrogatories, and admissions on file." Such a motion, whether or not accompanied by affidavits, will be "made and supported as provided in this rule," and Rule 56(e) therefore requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the "depositions, answers to interrogatories, and admissions on file," designate "specific facts showing that there is a genuine issue for trial."

Celotex Corp., 477 U.S. at 324. However, "'a mere scintilla of evidence is not enough to create a fact issue.'" Barwick v. Celotex Corp., 736 F.2d 946, 958-59 (4th Cir. 1984) (quoting Seago v. North Carolina Theaters, Inc., 42 F.R.D. 627, 632 (E.D.N.C. 1966), aff'd, 388 F.2d 987 (4th Cir. 1967)). There must be "sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted." Anderson, 477 U.S. at 249-50 (citations omitted).

Background

Plaintiff is the widow of Master Sergeant ("MSgt") Hartwell E. Edwards. MSgt Edwards served in the Air Force for approximately twenty-seven years and retired from active duty in May 1982. In late 1987, MSgt Edwards began to experience pneumonia-like symptoms and was coughing up blood. Doctors at Malcolm Grow Air Force Hospital at Andrews Air Force Base suspected that MSgt Edwards, a life-long heavy smoker, might have lung cancer. After running several tests on MSgt Edwards in late 1987 and early 1988, his doctors diagnosed him with squamous cell carcinoma in his right lung. While they tried to treat the cancer, MSgt Edwards died from his disease in late 1988.

Plaintiff claims that she is entitled to survivor's benefits because her husband's cancer was present while he was still on active duty. In support of her Veterans Administration ("VA") claim for benefits, Plaintiff cited a series of chest x-ray's showing the apparent presence of nodular densities in her husband's lungs as early as 1978. Plaintiff argued that those nodular densities were precursors to MSgt Edwards' cancer. Plaintiff's evidence, however, does not establish that. While she offered the opinions of three doctors noting the presence of nodular densities, all three also opined that they thought the nodular densities were simply nipple shadows rather than any sort of pathology.[1] On June 18, 1991, the Board of Veterans' Appeals ruled that MSgt Edwards's fatal lung cancer was not related to any condition present while he was in the

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[1] Apparently when a chest x-ray is taken from either the front (anterior) or back (posterior) view, the nipples will cast a shadow on the x-ray film similar in appearance to a denser-than-normal area of tissue. A radiologist can confirm that a density is simply a nipple shadow by either taking a side (lateral) chest x-ray or by using nipple markers.

In 1990, Plaintiff took MSgt Edwards's 1986 frontal x-ray, the x-ray on which the Whigham report was based, to Dr. Matthew Freedman of Georgetown University Hospital. After reviewing the x-ray, Dr. Freedman noted the presence of "[t]wo 1 cm nodular densities projected over both lower lung fields . . . consistent with nipple shadows." While Dr. Freedman believed that the densities were most likely nipple shadows, he noted that "films with nipple markers would be valuable in confirming this". Significantly, Ms. Edwards did not provice Dr. Freedman with her husband's 1986 lateral chest x-ray.[2] This is important because, as a letter from Dr. Robert Ruxer (attached to Plaintiff's complaint) makes clear, a conclusion of nipple shadows can be confirmed either by the use of nipple markers or the use of a lateral x-ray to supplement a frontal picture.

Plaintiff believes that Dr. Whigham's failure to report the presence of nodular densities in 1986 frustrated her efforts to obtain survivor's benefits. Plaintiff reasons that the Board of Veterans' Appeals relied on Dr. Whigham's allegedly flawed 1986 report of a "normal chest" as proof that MSgt Edwards did not have lung cancer when he retired from the Air Force in 1982. Plaintiff argues that if Dr. Whigham had correctly reported the presence of nodular densities, she would be able to establish their presence back to 1978 and thus persuade the Board of Veterans' Appeals of her entitlement to benefits.[3] Therefore, she wants the AFBCMR to amend Whigham's 1986 report to reflect the presence of nodular densities.

Plaintiff has been before this Court once before. On that occasion, Plaintiff sought review of the AFBCMR's 1994 decision refusing to amend the 1986 Whigham report. The AFBCMR's 1994 refusal was based on timeliness, but the Board also noted that it had reviewed the merits of Plaintiff's request and decided that the request was without merit. In her first action, Plaintiff sought (1) to overturn the AFBCMR's decision, (2) to enforce a FOIA request that she had propounded on the AFBCMR, and (3) for damages resulting from the AFBCMR's refusal to amend her husband's records and its refusal to honor her FOIA request. This court dismissed Plaintiff's FOIA claim for damages and remanded this matter to the AFBCMR for the sole purpose of reviewing the merits of Plaintiff's records-amendment claim. Edwards, DKC-95-3115, ORDER and Memorandum Opinion dated Oct. 15, 1996. The AFBCMR reviewed its prior decision and concluded that Plaintiff's evidence did not merit a change of MSgt Edwards's military records. That decision is now before the court.[4]

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[2] In her defense, it appears that the Air Force may not have provided Ms. Edwards with a copy of the lateral x-ray.

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[3] To the contrary, the Court of Veterans Appeals has already made clear that consideration of the Freedman report would not change its decision upholding the earlier decision of the Board of Veterans' Appeals. In an Order dated November 6, 1992, disposing of Plaintiff's motion for reconsideration in the Freeman report would not change its opinion that MSgt Edwards did not have cancer when he retired from the Air Force.

[4] Plaintiff is without the benefit of counsel and this lack of assistance makes her complaint somewhat difficult to decipher. It appears that, in addition to her claim regarding her husband's military records, Plaintiff renews her FOIA claim and her claim for damages. Those claims, however, are barred by this Court's prior opinion. Additionally, a generous reading of the complaint suggests a medical malpractice claim based on the theory that Dr. Whigham's failure to note nodular densities was negligent. Even if Plaintiff has plead such a claim--and the Court doubts that she has--Defendants correctly argue that 28 U.S.C. section 2675 (a) requires Plaintiff to file an administrative claim before she can recover damages arising out of the negligent acts of an employee of the United States. Plaintiff filed such a claim in October 1990, but voluntarily dismissed it when her attorney advised her that "the evidence [she] presented was not strong enough to bring a malpractice suit." Plaintiff has never renewed that claim. Her failure to do so dooms any medical malpractice claim she might have plead.

Analysis

Plaintiff argues that the AFBCMR has never demonstrated that Dr. Freedman's 1990 report was wrong. Plaintiff fundamentally misunderstands her burden of proof. Before the AFBCMR must change her husband's records, Plaintiff must demonstrate that those records contain an error. Nothing in Dr. Freedman's report, or in any of the other reports submitted by Plaintiff, establishes that Dr. Whigham's 1986 report was materially inaccurate. The AFBCMR considered all of Plaintiff's evidence on remand, including the Freedman report, and concluded that Dr. Whigham's report was accurate and that there was no need to amend it to reflect the presence of nipple shadows. There was nothing arbitrary or capricious about that decision. Indeed, it appears to have been supported by more than substantial evidence.

Conclusion

For the reasons stated above, the Court grants Defendant's motion for summary judgment. A separate order will be entered.

Sept. 22, 1998 "s/ ____________________"
Date Deborah K. Chasanow
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS
Plaintiff
v.
CIVIL ACTION No.

DEPARTMENT OF THE AIR FORCE
AFBCMR, et al.
MALCOLM GROW USAF MEDICAL CENTER
Defendants

CLAIM UNDER TITLE 10 ARMEED FORCES SUBTITLE A MILITARY LAW, SECTION 1552 (4) (B) AND STATUTE OF LIMINATION LAW GOVERNING CORRECTION OF USAF MEDICAL CENTER'S 1986 RADIOLOGY RECORD DENIAL 11 0CT 1994

I. Complaint.

Myra R. Edwards, pro se representative is before this court under United States Code Annotated, Title 28 Section 1346, 242 subsec. (a) (2) to request concurrent jurisdiction with the U.S. Court of Federal Claims for federal violations by the United States who denied correction of Major Whigham's omission of medical facts as untimely 11 October 1994. As a matter of law, facts based on the United States Memorandum of Law In Support of Motion To Dismiss..., dated 22 October 1997 shows: Major Whigham in 1986 chose not to comment on nodular densities/nipple shadows for Malcolm Grow's post service treatment records that Ms. Edwards, October 28, 1992, asked Department of the Air Force, Air Force Board Correction of Military Records (AFBCMR) under the Provisions of Title 10 USC, Section 1552 to correct based on the Department of Veterans Affairs denial for service benefits issued 18 June 1991.

Department of Veterans Affairs from 1991-1994 denied service connected entitlements based on medical facts under review using Malcolm Grow's treatment records for Major Whigham's 1986 omission. See denial by the Veterans Administration, issued June 18, 1991 and 6/15/94 which shows even though requested under the provisions of law, the United States refused to correct Major Whigham's omission of radiographic facts, based on Doctor Freedman's 1990 radiology finding, given to Ms. Edwards 16 April 1990. See enclosed letter to HQ AFMPC/DOA1, dated 6 March 1990, shows Ms. Edwards state in the second paragraph that she is awaiting answers from various government agencies,... and that the information she is requesting dates back to her late husband's medical records for the years 1978-1981 and was not discovered by her until after her husband's death. Ms. Edwards discovered medical facts after the death of her husband upon receiving Doctor Ruxer's 27 September 1989 medical facts for Malcolm Grow's 1978-1981 radiology records.

Ms. Edwards letter to the United States, dated 6 March 1990, under law shows: Ms. Edwards was asking the United States questions concerning the Statute of Limitations Law that governs the answers she was waiting to receive from government agencies, based on what was known at the time, after receiving Doctor Ruxer's 27 September 1989 medical finding.

After receiving Doctor Freedman's 1990 radiology finding for duplicate copies of Malcolm Grow's 1986 radiology film, under the provisions of Title 10, Section 1552, Ms. Edwards by application requested correction of Major Whigham's 1986 medical omission by giving Doctor Freedman's medical finding to Department of Air Force, 28, October 1992. Prior to giving Doctor Freedman's radiology finding to the Department of Air Force, Ms. Edwards gave Doctor Freedman's medical finding to the Department of Veterans Affairs (VA), 1 May 1990. See Doctor Freedman's 16 April 1990 radiology finding for duplicate copies of Malcolm Grow's 1986 radiology film and the enclosed letter dated 1 May 1990 sent to the VA for facts in omission based on Doctor Freedman's 1990 medical finding.

After sending the enclosed letter dated 1 May 1990 to the VA, in support of facts for Major Whigham's omission, the VA denied service entitlements, without including Doctor Freedman's medical finding in the June 18, 1991 denial decision. As a matter of law, Ms. Edwards appealed the VA's denial decision and under the provisions of Title 10, section 1552 requested correction of facts in omission for Malcolm Grow's post treatment medical records.

AFBCMR denied the request under law to correct Malcolm Grow's post treatment records as untimely, 11 October 1994. See enclosed Department of the Air Force correction denial sent to the Honorable Paul Sarbanes dated 14 October 1994 and to Ms. Edwards dated 11 October 1994.

This complaint is for federal violations under statute, and for the denial of benefits using Malcolm Grow's post treatment medical records from 1986-1994 with medical facts in omission for the finding and evaluation of nodular densities in the year of occurrence (1986).

After receiving the Department of Air Force denial for correction of Major Whigham's omission, Ms. Edwards requested reconsideration; however Department of Air Force denied the reconsideration request 22 November 1994 based on the asserted date of discovery, 16 April 1990. The Department of Air Force letter dated 22 November 1994 states, you asserted a date of discovery of April 16, 1990, which would, if correct make the application timely. Ms. Edwards sent several requests to AFBCMR for a copy of records in support of the date, the sovereignty claimed Ms. Edwards discovered Major Whigham's omission. Facts under law are: November 22, 1994, Department of the Air Force refused to correct Major Whigham's omission based on the date Ms. Edwards affirm to have discovered the omission; and under law, the Department of Air Force refused to release records in support of the date, Ms. Edwards should or could have discovered Major Whigham's omission. As a matter of law, Ms. Edwards filed claim before the United States District Court of Maryland for the release of records under the Freedom of Information Act (FOIA) based on AFBCMR's asserted date, for discovering Major Whigham's omission. The U.S. District Court of Maryland in the enclosed ORDER and Memorandum Opinion on page 9 and 10 states: "Apparently, what Plaintiff (Ms. Edwards) is seeking is a document showing that someone told Plaintiff that her husband's medical records were allegedly in error more than three years before she filed her request for a records correction." …"The important point, as far as AFBCMR was concerned, was not when Plaintiff actually became aware of the relevant facts, but rather when Plaintiff reasonably could have discovered the relevant facts.

As a matter of law, request the honorable court decide whether or not, the United States erred under statute, 11 October 1994, 22 November 1994 and 31 March 1997 based on the request to correct Major Whigham's 1986 medical omission. Request the Honorable Court decide whether or not, the United States created factual and legal error based on admission in the Memorandum of Law In Support of Motion to Dismiss, dated 22 October 1997.

The Memorandum of Law…, shows the United States on page 7, last paragraph states: "The fact that this doctor chose not to include a comment about nipple shadows does not make this record in error or inaccurate." By law, Major Whigham's omission shows Malcolm Grow's post treatment medical records are in error; to include errors for medical reviews using Malcolm Grow's uncorrected medical facts. As a matter of law, prior to the United States acknowledging Major Whigham chose to omit or not comment on radiographic findings in 1986, under statute Ms. Edwards asked the United States to correct Major Whigham's omission.

Ms. Edwards' complaint before this court is not for a decision on whether or not, the omission would change the outcome of the Veterans Administration denial, or to prove the accuracy or inaccuracy of facts based on the omission. **Ms. Edwards is before this court for a decision on whether or not the United States unjustifiably denied correction of Major Whigham's 1986 omission, to include errors under statute for the correction denial.**

Ms. Edwards is before the court for a decision on whether or not the United States violated federal statutes, and regulations to unjustifiably deny correction of Major Whigham's omissions of medical facts under review from 1986-1994.

Facts before this court are: The U.S. District Court of Maryland remanded the case for correction back to AFBCMR 11 October 1996. After the U.S. District Court remanded the case for correction back to AFBCMR, the United States refused correction by stating 31 March 1997: After careful consideration of your application for correction… the Board determined there was insufficient evidence of error or injustice to warrant corrective action. Accordingly, the Board denied your application.

The request for correction dated 28 October 1992, shows in block #10 the United States knew the record for correction was being reviewed by the Department of Veterans Affairs for COVA case number 91-1685, VA No. XSS 513-30-5804. Also the application for correction shows Ms. Edwards states on page 4, QUESTION #8, paragraph 3: I requested a review of Hartwell E. Edwards 1978-1986 military records from Doctor Ruxer and Doctor Schoenberger, who reported a finding that is based on information, as written in Malcolm Grow's medical records. This includes, Malcolm Grow's 1986 chest x-ray report for Major Whigham, without knowing under law Major Whigham chose to omit a radiographic finding for nodular densities/nipple shadows; thereby creating factual error based on the request for correction to show a medical relationship based on past findings of possible nodular densities/nipple shadows, as they relate to the 1987/1988 discovery of lung cancer. See Doctor Ruxer, 27 September 1989 medical opinion based on past findings of nipple shadows based on Malcolm Grow's uncorrected medical facts for Major Whigham's medical omission.

The request for correction also shows, Ms. Edwards sent the following letters to Secretary of the Air Force, SAF/MIBR dated 16 February 1993 and 3 August 1993, to include the enclosed letter to AFBCMR dated 20 July 1994. Ms. Edwards affirm prior to receiving the 11 October 1994 correction denial, she wrote SAF/MIBR 16 February 1993, and on page 2 she states: In accordance with the application for correction of military records under the Provision of Title 10 U.S.C., Section 1552, request the United States review Malcolm Grow's military record for omissions under law based on Doctor Freedman's 16 April 1990 radiographic finding which shows Malcolm Grow omitted medical facts for nodular densities and nipple shadows in 1986 when the late Mr. Edwards came to Malcolm Grow for the acute appointment. See chronological record of medical care from Malcolm Grow dated 10 February 1986 and Major Whigham's 1986 radiology report for omission of medical facts not included in the medical record based on the request for correction. Also review, Doctor Freedman's radiographic finding given to Ms. Edwards 16 April 1990, for medical facts before this court based on the request for correction.

3 August 1993, Ms. Edwards sent the attached letter to SAF/MIBR for notification on the location of Malcolm Grow's uncorrected medical records, for knowledge under law of records under request for correction. Finally, 20 July 1994, Ms. Edwards sent notice to Executive Director AFBCMR to request correction of Major Whigham's omission. Thereby showing correction was denied 11 October 1994 with the United States claiming: The application for correction was not timely filed. See enclosed notices to deny correction sent to the Honorable Sarbanes dated 14 October 1994 and to Ms. Edwards dated 11 October 1994.

II. Facts As A Matter of Law for the Medical Correction Denial are as follows:

1. Ms. Edwards filed the request to correct Malcolm Grow's 1986 chest radiology report by application through AFBCMR, 28 October 1992, two years and five months after receiving Doctor Freedman's 16 April 1990 radiology report for radiographic findings not commented on by Major Whigham in 1986.

2. Ms. Edwards affirm she received Doctor Freedman's 16 April 1990 radiology finding for knowledge of Malcolm Grow's medical omission. Ms. Edwards affirm she did not know Major Whigham chose not to comment on nodular densities and nipple shadows until October 22, 1997, based on facts in admission by the United States who denied correction of the omission based on Doctor Freedman's radiographic finding 11 October 1994.

3. The VA omitted or failed to include Doctor Freedman's medical finding in the June 18, 1991 denial decision for entitlements. Thus, Ms. Edwards appealed the VA denial decision based on Malcolm Grow's post service treatment records and asked the Department of Air Force to correct Major Whigham's 1986 medical omissions for admissions by the United States in the Memorandum of Law…, showing Major Whigham chose not to comment on radiographic medical findings in 1986.

4. See enclosed letter dated 1 May 1990 for notification to the VA that Georgetown University Hospital's radiologist reviewed duplicate copies of Malcolm Grow's 1986 chest radiology film. And that, Doctor Freedman, radiologist at Georgetown University Hospital , sent notice, 16 April 1990 that Malcolm Grow's 1986 chest radiology film shows: "Bi-apical plural thickening and two 1cm nodular densities projected over both lungs for Major Whigham's 1986 omission of medical facts not apart of Malcolm Grow's post treatment records.

5. The enclosed Memorandum Decision Before Judge Farley, dated October 22, 1992 shows, this court states on page 2: "Upon consideration of the **record,** appellant's brief, and the Secretary's motion for summary affirmance; the Court holds that appellant has not demonstrated that the Board committed either factual or legal error which would warrant reversal. February 10, 1993 the U. S. Court of Appeals for the Federal Circuit, granted the Secretary of

Veterans Affairs ORDER to waive the requirements of Federal Circuit Rule 27(d); thus granting, the secretary's motion to dismiss the case for entitlements; without knowledge of the following judicial facts: (1) The United States unlawfully refused correction of Major Whigham's omission as untimely, (2) Major Whigham in 1986 chose not to comment on nodular densities/nipple shadows that were required by law to be apart of Malcolm Grows medical records for facts in the entirety based on the United States 22 October 1997 admission showing Major Whigham chose not to comment on nodular densities and nipple shadows in 1986. Ms. Edwards affirm she discovered Major Whigham omission based on Malcolm Grow's post service medical records 16 April 1990 and that she requested correction of the omission 28 October 1992 without knowing the facts for the omission are: Major Whigham chose not to comment on radiographic findings.

6. Ms. Edwards affirm after sending notice of the omission to the VA, 1 May 1990, and requesting correction, the United States never stated: Major Whigham chose not to comment/omit medical facts until 22 October 1997. Please review Defendant's Memorandum of Law In Support of Motion to Dismiss Plaintiff's Complaint or for Summary Judgment. The claim of the United States in the Memorandum of Law To Dismiss... is, Major Whigham wrote the 1986 chest radiology report differently from other medical professionals who reported radiographic findings; therefore showing the United States is sanctioning the omission without lawfully correcting the omission.

7. Ms. Edwards request judgment on whether or not the United States, by law was required to tell the VA that Major Whigham chose not to comment on nodular densities/nipple shadows, prior to Ms. Edwards discovering the omission and requesting correction of the medical omission. See enclosed "Statement of the Case", Summary of Evidence and Adjudicative Actions Taken before the VA, dated 31 October 1988 for post service treatment records.

8. The post service treatment records to the VA from Malcolm Grow shows, the United States did not state or tell the VA, Major Whigham chose not to comment on nodular densities/nipple shadows in 1986. However, the United States did tell the VA and the U.S. District Court of Maryland, that the sovereignty found no basis to conclude that a chronic condition existed prior to (MSgt Edwards) retirement from the Air Force in 1982. Therefore, we are not persuaded that the applicant's husband was unfit at the time of his retirement and do not believe that he should have been retired by reason of physical disability. See Memorandum of Law In Support of Motion to Dismiss…, page 4, (exhibit 2).

In accordance to federal law, entitlements for service-connection are based on whether or not a chronic condition existed prior to retirement. Which includes, primary causes of death, such as Large Cell Carcinoma that by its nature overwhelmingly causes death. Entitlements can also be established under law, if there is evidence that the veteran's fatal illness incurred in service or was aggravated by service as either the primary cause of death or contributed substantially and materially to the production of death. As a matter of law, Ms. Edwards finds the United States prohibited correction of Major Whigham's medical omission for Malcolm Grow's post service treatment records, by unlawfully denying correction while knowing Doctor Ruxer and Doctor Schoenberger based their medical opinions on Malcolm Grow's uncorrected medical facts. See enclosed Correction Application, dated 28 October 1992 page 4, paragraph 3, beginning with "I requested a review of Hartwell E. Edwards, 1978-1986 military medical records from Doctors Ruxer and Schoenberger…

Error: The United States denied correction as untimely 11 October 1994; and the United States affirmed before the U.S. District Court of Maryland in the Addendum to Record of Proceedings Air Force Board for Correction of Military Records dated March 31, 1997 that there is insufficient relevant evidence presented to demonstrate the existence of probable error or injustice, while admitting in the Memorandum of Law in Support of Motion to Dismiss Plaintiff's Complaint…, dated 22 October 1997 that Major Whigham chose not to comment on medical facts that under law are still not apart of Malcolm Grows medical records.

Ms. Edwards asked the Honorable court to find the United States unlawfully denied correction of Major Whigham's omission 11 October 1994, 22 November 1994 and 31 March 1997.

Facts for the correction request before this court are: (1) October 11, 1994 the United States denies correction by stating, the correction request was not filed under statute; thus in the interest of justice the Board cannot excuse your failure to submit the application beyond the three-year limitation for discovering the error or omission. (2) November 22, 1994 the Board states, correction of the military record was denied because you asserted a date of discovery of April 16, 1990 which would if correct make the application timely. With facts under law showing the United States never provided any records as required by law for violations under statute to show: Ms. Edwards had knowledge of the essential facts that gave rise to the application for correction for the lawful finding that shows: correction was denied because our records show you had knowledge of Major Whigham's omission before receiving Doctor Freedman's radiographic finding.

(3) 31 March 1997, the United States denies correction of Major Whigham's omission by stating on page 2, paragraph 1: Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice based on the request for correction. (4) October 22, 1997, the United States in the Memorandum of Law in Support of Motion to Dismiss... on page 7, last paragraph states: The fact that this doctor (Major Whigham) chose not to include a comment about nipple shadows does not make the records in error or inaccurate. Facts before this court are: Under statute and in accordance with federal laws, Ms. Edwards requested correction of Malcolm Grow's 1986 post service records which includes correction for comments not included when finding nipple shadows, and the inclusion of all

radiographic findings not reported on the post treatment records for 1986 regardless of whether or not the omission makes the record in error or inaccurate. (The debate over medical errors can be determined after Malcolm Grow corrects its omission of medical facts for the 1986 issue).

Before this court is a copy of the Memorandum Opinion by the United States Court for the District of Maryland, issued 11 October 1996. See page 11 for section 1552(b) that shows the law permits correction of military records if an application is made within three years after the applicant discovers the error or injustice... This complaint is for errors under statute based on the United States denying correction of Major Whigham's omission that denied justice based on review of medical facts in the entirety (without omissions). See certified notice to AFBCMR dated 20 July 1994 requesting correction before receiving the correction denial dated 11 October 1994.

Ms. Edwards is requesting judgment under law for monetary relief based on the United States refusal to correct Major Whigham's medical omission in accordance to statute. Monetary relief based on the omission of medical facts not apart of Malcolm Grow's medical records for review by independent doctors in 1989 and 1990. And for the United States denying correction while knowing Major Whigham under law breached his duty as a medical professional by not reporting and choosing to omit radiographic findings for Malcolm Grows post service treatment records.

III. Statement of Facts and Course of Proceedings for Admissions That Major Whigham Omitted Radiographic Findings for Malcolm Grows 1986 Radiology Record.

The enclosed Respondent-Appellee's Motion To Dismiss and Motion to Waive Requirements of Federal Circuit Rule 27(d), dated January 19, 1993 is enclosed with Appendix from Stuart M. Gerson, Assistant Attorney General. The enclosed Respondent-Appellee's Motion To Dismiss on page 3, Under Section II.

Statement of Facts and Course of Proceedings Below states,... Ms. Edwards appealed the decision of the BVA and, on June 18, 1991 the BVA denied service connection for the cause of the veteran's death. ...the Board of Veterans Appeal (BVA) states: ...Addressing, Ms. Edwards' contentions that her husband had lung cancer for some time prior to diagnosis of the cancer in 1987, the BVA reviewed the reports of **two physicians, one from Malcolm Grow (Doctor Ruxer) United States Air Force Medical Center and one private specialist (Doctor Schoenberger) in plumonary medicine, both of whom concluded that there was no radiographic evidence of lung cancer prior to 1987.** The major problem with these two reports: Both reports are based on Malcolm Grow's uncorrected 1986 radiology report for the late MSgt. Edwards. Thus the Court, and the Plaintiff cannot affirm, the reports from these two medical doctors to conclude Major Whigham omission does not obscure material relevant facts with the issue of law being: Defendant's refuse to correct the 1986 omission for receipt of a medical finding that is clear based on facts in the entirety.

Request this court review the findings of these two doctors and consider under federal law, the United States never acknowledged Major Whigham chose not to comment on medical facts in review by the BVA January 19, 1993. Or as a matter of law, the United States never corrected Major Whigham's omission with the issue of law being: Ms. Edwards requested correction after receiving the BVA's denial based on post treatment medical records June 18, 1991. Also enclosed is a copy of the Department of Veterans Affairs Rating Decision, see rating date in line 4, issued 06/15/94 and evidence for: Reports of treatment based on Malcolm Grow's uncorrected medical records. Also see Doctor Ruxer's 27 September 1989 medical finding; Doctor Schoenberger's 5 December 1990 medical finding; and Department of Veterans Affairs "Statement of the Case, Summary of Evidence and Adjudicative Action Taken for medical facts submitted with the issue of law being Malcolm Grow's uncorrected treatment records.

The United States in the enclosed Memorandum of Law In Support of Motion To Dismiss Plaintiff's Complaint… on page 7, last paragraph, states: "The fact that this doctor (Major Whigham) **chose not to include a comment about nipple shadows does not make this record** (1986 radiology report from Malcolm Grow USAF Medical Center) in error or inaccurate". The fact that doctors write x-ray reports differently does not make them in error or create an injustice from which Plaintiff is entitled to relief. Ms. Edwards complaint is not for the way in which this doctor wrote his report…Ms. Edwards complaint is for the omission of medical facts that are required by federal law to be apart of the medical records for facts in the entirety being reviewed for federal entitlements.

By law, Major Whigham professionally breached his duty as a medical professional by choosing to omit radiographic findings for nodular densities and nipple shadows in the year of occurrence (1986). As a matter of law request this Court find Major Whigham's omission creates both factual and legal error based on the request for correction of post treatment records under the Provisions of Title 10, Section 1552. Also request this court find the United States unlawfully denied correction of Major Whigham's omission with facts under law for Major Whigham choosing to breach his duty as a medical professional by not reporting in the year of occurrence radiographic medical facts.

Doctor Ruxer's enclosed 27 September 1989 medical opinion shows he states: On page 2… "I have difficulty connecting those findings described in 1978 and 1981 (meaning nodular densities found by other radiologists at Malcolm Grow in the year of occurrence) with later abnormalities on the chest x-ray in late 1987 and early 1988. Doctor Ruxer finding was reviewed under "Statement of the Case from the Veterans Administration, under Pertinent Laws; Regulations; Rating Schedule Provisions for errors based on the request for correction when attempting to **establish service connection for a veterans fatal illness or injury (1988-1993), under law by providing evidence that a disability incurred in or aggravated by service was either the primary cause of death or contributed substantially and materially to the production of death, (38 USC 410, 38 CFR**

3.312). Doctor Ruxer's medical finding is based on review of Malcolm Grow's Medical Records with (Major Whigham's) interval radiology report being uncorrected, showing there are facts in omission for review based Doctor Freedman medical finding issued 16 April 1990. Doctor Ruxer states, he had difficulty connecting reports of reported nodular densities with the 1986 radiographic finding from Malcolm Grow omitting facts for nodular densities/nipple shadows with the issue being (later findings) of nodular densities in 1987 and 1988.

Doctor Schoenberger's medical report for the 1986 military record states: He continued to be followed in the military health system after retirement and had several additional visits for cough and bronchitis, including one episode of hemoptysis (coughing up blood) in February 1986. Then in late 1987, he began again to cough up blood, and this time his chest x-ray showed a shadow in the right lower lobe suspicious for cancer. Doctor Schoenberger's medical report shows he reviewed Malcolm Grow uncorrected 1986 medical records for determination of facts under federal law used to affirm the omission does not create an injustice that Plaintiff should receive merit for. Doctor Schoenberger's medical report, was given to Ms. Edwards long before she discovered in 1997 that Major Whigham chose to omit an evaluation for nodular densities/nipple shadows to affirm facts stated when using Malcolm Grow's post service treatment records for the 1986 issue. The civil record shows, Doctor Schoenberger's medical report does not state, even though nodular densities were omitted for the 1986 issue, his review of the medical record includes Doctor Freedman's medical finding to affirm Major Whigham's omission does not create an injustice that Plaintiff should receive merit for.

On page 5 of Respondent-Appellee's Motion to Dismiss dated January 19, 1993 the CVA affirmed the BVA's decision against reopening Mr. Livingston's claim, and stated "the [BVA] did not err in concluding that no new and material evidence was present without knowing (1) Ms.

Edwards filed the correction request within statute; however, (2) Defendants contrary to federal law refused to correct Major Whigham's omission; and (3) Major Whigham chose to omit radiographic data that Ms. Edwards in accordance to federal law asked AFBCMR to correct. Facts before this Court are, the defendants/United States never acknowledged Major Whigham chose not to comment on nipple shadows/nodular densities before 1997, (Defendant's Memorandum of Law...). And Plaintiff's claim DKC-95-3115 affirms, with no ruling by the Court, that Defendants contrary to federal law denied Plaintiff's lawful correction request. Thus, the question of error in January 1993 based on the United States refusal to correct Major Whigham's omission could not be determined by the BVA, and Plaintiff's civil claim before United States District Court of Maryland, shows this court never determined Defendants violated federal law for the unlawful correction denial. Ms. Edwards asked United States District Court of Maryland to take into account, that the United States by federal law is required to correct Major Whigham's admitted omission, and thus avoid the legal burden placed on Ms. Edwards challenging the validity of each correction denial. See enclosed letter from United States dated 14 March 1990, which states: The statute of limitation for requesting a correction of military records is three years. The civil record before United States District Court of Maryland DKC-95-3115 affirms Ms. Edwards discovered Major Whigham's omission within three years; however, AFBCMR still refused correction by asserting: DKC-97-1533; Correction of the omission is not warranted, Plaintiff has not provided sufficient relevant evidence to warrant correction.

Request this court review Respondent-Appellee's Motion to Dismiss and Motion to Waive Requirements of Federal Circuit Rule 27(d) dated January 19, 1993 which shows BVA states on page 5, paragraph 2: ...Livingston's case rests solely on the alleged misinterpretation of the legal effect of the Board's decision... In the absence of a challenge to the validity of a statute or a regulation, or the interpretation of a constitutional or statutory provision or a regulation, we (meaning the U.S. Court of Appeals for the Federal Circuit have no authority to consider the appeal. As this case before the United States District Court of Maryland shows Plaintiff challenged Defendant's denial issued under statute; however the court never ruled on Judge Ellis finding in McFarlane for Ms. Edwards civil claim.

Ms. Edwards state her claim before this Court is against Malcolm Grow, USAF Medical Center and AFBCMR for violations under federal laws which shows the United States, misinterpreted statutory provisions for correction of Major Whigham's omission for the late MSgt Edwards 1986 post service treatment records.

The civil record shows Ms. Edwards filed this claim requesting concurrent jurisdiction based on federal and constitutional laws, used unjustifiably by the United States to deny correction of Major Whigham, USAF, at Malcolm Grow Medical Center's 1986 radiology record,. The request for concurrent jurisdiction was filed after United States District Court of Maryland ruled in favor of Defendants without ruling on the issue of law for remanding Plaintiff's civil claim based on Judge Ellis ruling in McFarlane. DKC-95-3115 was remanded in light of Judge Ellis ruling in McFarlane, with the issue of law being: Defendants contrary to federal law imported a reasonable person test in Title 10, Section 1552. The civil record shows United States District Court of Maryland never ruled on statute violations, but ruled in err that MSgt Edwards post treatment record does not warrant correction based on Defendant's "Addendum to Record of Proceedings". Ms. Edwards civil claim under the request for concurrent jurisdiction shows, Defendant's affirmed in their Addendum to Record of Proceedings for the remanded civil complaint that the Board reviewed the 1986 x-ray film, to affirm in DKC-97-1533, summary judgment is appropriate because there are "No errors or injustice data on the civil record", with United States District Court of Maryland barring Defendant's unjustifiable argument before United States Court of Federal Claims by ruling: Facts in 98-930C allegedly was not reviewed by this Court or was not available at time of Plaintiff's hearing (DKC-95-3115 and DKC-97-1533). Ms. Edwards requested judgment of the omission in accordance with laws that govern a professional, employed by the United States who breach his duty by not commenting on radiographic findings in 1986 when the late MSgt. Edwards went to Malcolm Grow for the acute appointment (10 February 1986). Request Judgment on Malcolm Grow USAF Medical Center being required to release a copy of the late Mr. Edwards frontal and lateral projection chest x-ray film, in accordance with the enclosed FOIA request dated 28 September 1998, this request was sent based on Defendants review of the lateral chest x-ray film for the remanded civil complaint. The United States denied correction of Major Whigham's 1986 radiology report, 11 October 1994 with facts under law showing correction continues to be unjustifiably denied. See enclosed letter from the United States dated 31 March 1997.

IV. Doctor Freedman's 1990 Radiographic Report and Additional Facts for Correction.

Doctor Freedman sent Ms. Edwards a copy of the 16 April 1990 radiology report after reading duplicate copies of Malcolm Grows 1986 and 1988 radiology film.

Department of the Air Force sent written notification that they received the application for correction 9 Nov 1992. See enclosed notice to Ms. Edwards dated 12 April 1993. Facts for correction are shown on the notice dated 20 October 1993. Defendants state: Department of Air Force is awaiting completion of a staff advisory opinion from the appropriate Air Staff Office of Primary Responsibility (OPR). Ms. Edwards response from the OPR was: Correction is denied because you did not file a timely application. The civil record shows even after Ms. Edwards affirmed she filed within statute Defendants continued to unlawfully deny correction of Major Whigham's 1986 omission. The enclosed letter dated, October 14, 1994 shows Department of the Air Force sent notice to the Honorable Paul Sarbanes that the application for correction was denied based on timeliness. The civil record before United States District Court of Maryland shows Defendant's denied correction with the issue of law for Defendant's correction denial being: (see enclosed October 1997 Memorandum of Law In Support Of Motion To Dismiss) on page 7, last paragraph, Major Whigham chose to omit or not comment on medical facts under request for correction with the issue of law for the remanded civil record being Plaintiff's timely filing that Defendants contrary to federal law denied.

Prior to receiving Doctor Freedman's medical finding for duplicate copies of Malcolm Grow's 1986 and 1988 radiology film; the enclosed letter shows, Ms. Edwards wrote Department of Air Force Headquarters Air Force Military Personnel Center on 6 March 1990 to request procedures for correction of military records. The enclosed letter from the United States, dated 14 March 1990 states: AFBCMR considers applicable requests and submits appropriate recommendations to the Secretary of the Air Force whenever, in the Boards judgment, and error or injustice exists.

The United States in the enclosed Memorandum of Law In Support of Motion to Dismiss Plaintiff's Complaint or For Summary Judgement before the U.S. District Court of Maryland, dated October 1997 states, on page 2, paragraph 4: Attempting to establish a claim to the Veterans' Administration ("VA") for death benefits, Ms. Edwards had three different doctors review her husband's medical records. All opined that the projections on the earlier x-rays were nipple shadows; without benefit of knowing: In 1986 Malcolm Grow did not report a finding for nodular densities/nipple shadows for examination by these doctors (review of the medical record in its entirety) for determination if a pre-existing condition (longevity of the nodular densities/nipple shadows) lead to, or contributed to the production of cancer that lead to death.

On page 8, of the Motion to Dismiss, the United States, said, the fact that doctors write x-ray reports differently does not make them in error or create an injustice from which Plaintiff is entitled to relief. Defendants determined in DKC-97-1533, Plaintiff should be denied relief, even with the issue of law being: Statute violations, not the manner in which Major Whigham chose to write the

1986 x-ray report, the civil record shows, he clearly omitted medical facts. Not that he wrote them in a certain manner.

Ms. Edwards explains in the request for concurrent jurisdiction that, this complaint is not for whether or not, Major Whigham wrote his 1986 radiology report differently. This complaint, DKC-98-4190 and 98-930C is for **unlawfully denying correction of Major Whigham's omission.** And for, **omitting medical facts under review by independent doctors and the BVA that denied justice, based on the request for correction, (examination of the medical record in its entirety) which if corrected would affirm Defendants position in DKC-97-1533, in accordance with federal law. Thus showing: Even though Major Whigham chose to omit or not comment on radiographic findings in the late MSgt Edwards medical report, this omission does not make the civil record in error or create an injustice that Plaintiff should receive merit for. DKC-98-4190 and 98-930C affirms Ms. Edwards is requesting relief based on Major Whigham choosing as a medical professional, to omit medical facts that by law were filed within statute and were under request for correction.**

The United States Court of Veterans Appeal state in the enclosed Memorandum Decision before Farley, Associate Judge, on page 2, paragraph 1,... "A finding is clearly **erroneous** when although there is evidence to support it, the reviewing Court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Ms. Edwards request for concurrent jurisdiction shows, she asked United States District Court of Maryland to review, this compliant for **errors under statute and federal violations** based on the request for correction under the Provisions of Title 10 USC Section 1552. And that the court, **render final judgment** on the entirety of the medical record with no exclusion/omission of medical facts with the issue of law being: Medical reviews by independent doctors who opined without knowing Major Whigham in 1986 chose to omit radiographic findings, never apart of Malcolm Grow's medical records for the 1986 issue.

The application for correction, dated 28 October 1992, shows: Ms. Edwards in block 10, told the United States, Malcolm Grows medical facts with the omission is being reviewed by United States Court of Veterans Appeals COVA case number 91-1685, VA No. XSS 513-30-5804. See enclosed letter from AFBCMR, dated 14 March 1990, to affirm Defendants state: ...If the VA is doing a review of your requested benefits, this application may be delayed. Approximately four-years later, AFBCMR sends the correction denial dated 22 November 1994 to affirm, Plaintiff's correction request is being denied based on timeliness.

Prior to the United States denying the records correction, Ms. Edwards sent the Office of the Assistant Secretary the enclosed letter dated 16 February 1993. This letter shows, Ms. Edwards states: Doctor Freedman's radiology report **contradicts** Malcolm Grow's 1986 radiology report without knowing, under federal law Major Whigham chose to omit/not comment on nodular densities/nipple shadows that Ms. Edwards asked the United States to correct.

V. Injustice.

By law, the United States created an injustice for the 1986 interval medical record in 1986 when Major Whigham chose to omit radiographic findings. By law the injustice continued, even after the lawful request for correction of Major Whigham's omission; to include requesting reconsideration, prior to United States District Court of Maryland remanding the civil complaint for further proceedings (DKC-97-1533). See enclosed letters from AFBCMR dated 22 November 1994 and 31 March 1997 denying correction of Major Whigham omission for the 1986 post treatment service records. Ms. Edwards' request for concurrent jurisdiction is based on Defendant's "Addendum to Record of Proceedings" (DKC-97-1533) used before United States District Court of Maryland to affirm: Plaintiff should not receive merit even with the civil record affirming the application was filed within statute. Thus, the challenge under federal law in DKC-98-4190 and 98-930C is **new evidence** to affirm: "There never was a issue of injustice or error under federal law (**Plaintiff filed a frivolous suit**) that would require the Court to sanction Plaintiff or correct Major Whigham's 1986 omission.

Ms. Edwards asked the Secretary of the Air Force in the letter dated 16 February 1993 to resolve the contradiction of medical facts without knowing the issue for correction was/is: Major Whigham chose to omit medical facts, thereby creating an injustice by the United States with no possible resolution based on the United States refusal to correct Major Whigham's omission.

The enclosed certified letter, dated 20 July 1994 to AFBCMR for correction shows, Ms. Edwards states the request for correction is for evaluation on the longevity of the nipple shadows for a pre-existing condition of the proximate cause of lung cancer that led to death. After sending this letter to AFBCMR on 20 July 1994, the request for correction was denied as untimely on 11October 1994. See enclosed letter from AFBCMR to Ms. Edwards denying correction as untimely.

VI. Case in the Appeal of Hartwell E. Edwards, from the Decision of the Veterans Administration - "SUMMARY OF EVIDENCE AND ADJUDICATIVE ACTIONS TAKEN".

The enclosed SUMMARY OF EVIDENCE from the VA shows Malcolm Grow did not include medical facts to the Department of Veterans Affairs, to show, Major Whigham chose to omit, or not comment on nodular densities found by reading the late MSgt. Edwards' 1986 radiology chest x-ray film, April 16, 1990.

The VA in the 3rd paragraph on page 2, of the SUMMARY OF EVIDENCE, UNDER PERTINENT LAWS; REGULATIONS AND RATING SCHEDULE PROVISIONS, states: "There are primary causes of death which, by their very nature, are so overwhelming that eventual death can be anticipated…"; however, even in such cases it must be considered whether there may be reasonable basis for holding that a service-connected condition was of such severity as to have had a material influence in accelerating death. Facts based on the Summary of Evidence are as follows: (1) Major Whigham's omission was never corrected, even though requested by law, for facts in adjudication before the Department of Veterans Affairs from 1986-06/15/94. (2) As a matter of law, the United States knew Doctor Ruxer and Doctor Schoenberger gave medical opinions based on Malcolm Grows uncorrected medical facts, (see application for correction under Question #8) which shows, the claim of the United States before the courts for refusing correction is: Ms. Edwards had three doctors review the medical records and all opined that the projections on the earlier x-rays were nipple shadows. (TR 79-80, 81-83). See Memorandum of Law In Support of Motion to Dismiss, page 2, paragraph 4.

VII. Statement of Facts.

Ms. Myra R. Edwards is the widow of Hartwell E. Edwards, a former member of the Air Force. In May 1982, MSgt. Edwards retired from active duty. October 11, 1994, AFBCMR denied correction of Major Whigham's omission as untimely. November 22, 1994 AFBCMR denied reconsideration based on the asserted date for discovering Major Whigham's omission. March 31, 1997 AFBCMR denied correction of Major Whigham's omission by stating there was insufficient evidence of error or injustice to warrant corrective action. MSgt. Edwards died of lung cancer October 11, 1988 from Large Cell Carcinoma of the lung. The civil record before the court affirms AFBCMR is consistently misrepresenting or changing the basis Ms. Edwards had three doctors review the medical records and all opined that the projections on the earlier x-rays were nipple shadows. (TR 79-80, 81-83). See Defendant's Memorandum of Law In Support of Motion to Dismiss, page 2, paragraph 4, appendix H.

VII. Statement of Facts.

Ms. Myra R. Edwards is the widow of Hartwell E. Edwards, a former member of the Air Force. In May 1982, MSgt. Edwards retired from active duty. October 11, 1994, AFBCMR denied correction of Major Whigham's omission as untimely. November 22, 1994 AFBCMR denied reconsideration based on the asserted date for discovering Major Whigham's omission. March 31, 1997 AFBCMR denied correction of Major Whigham's omission by stating there was insufficient evidence of error or injustice to warrant corrective action. MSgt. Edwards died of lung cancer October 11, 1988, cause of death Large Cell Carcinoma. The civil record before the court affirms AFBCMR is consistently misrepresenting or changing the reason given the 1986 correction denial. The civil record before United States District Court of Maryland shows the basic issue with Plaintiff requesting correction is: Major Whigham omitted radiographic findings for the late MSgt. Edwards 1986 radiology report that Ms. Edwards asked within statute be corrected to ensure the medical records used to determine Veterans entitlements from 1988-1994 are not askew by facts in omission. Facts in admission (98-930C) shows, Ms. Edwards in 1995 filed claim for entitlements through the Veterans Administration for secondary cause of death (Agent Orange) based on MSgt. Edwards service record as a Vietnam Veteran. Ms. Edwards contends, the fact that she received a secondary claim does not relieve AFBCMR of its violations under federal law for each correction denial that is apart of the civil record in DKC-95-3115, DKC-97-1533, DKC-98-4190 and 98-930C.

Ms. Edwards affirm, she tried under FOIA to get the United States to release, documents or records for knowledge based on the United States assertion that denied correction in 1994. See enclosed letters from Ms. Edwards dated 11 May 1995 and certified request dated 24 May 1995; see AFBCMR's response dated May 04, 1995, 22 May 1995, March 22, 1995, March 28, 1995 and 14 December 1995. The letters from AFBCMR affirm, they refusal to release records per Ms. Edwards request, by asserting FOIA does not require them to release subjective opinions not supported by records when determining Major Whigham's omission does not create a error or injustice that Ms. Edwards should receive merit for.

The certified letter, dated 4 August 1995 was Official Notification of the civil suit for denial of records in support of knowledge that Ms. Edwards knew Major Whigham's chose not to comment on nodular densities/nipple shadows before receiving Doctor Freedman's 16 April 1990 medical finding. The civil record shows, Ms. Edwards went before the U.S. District Court of Maryland because she believed AFBCMR unjustifiably refused to release records that support under federal law each correction denial.

The enclosed U.S. District Court of Maryland's ORDER and Memorandum Opinion issued 11 October 1996 states on page 9 and 10: ..."Apparently, what Plaintiff is seeking is a document showing that someone told Plaintiff that her husband's medical records were allegedly in error more than three years before she filed her request for a records correction." Ms. Edwards' affirm all she asked for was a copy of the records that support AFBCMR's correction denial. ..."The U.S. District Court opined: The important point, as far as AFBCMR was concerned, **was not when Plaintiff actually became aware of the relevant facts, but rather when Plaintiff reasonably could have** commitment the civil record clearly shows, United States never ruled, AFBCMR violated federal law.

The enclosed Addendum to Record of Proceedings Air Force Board For Correction of Military Records dated March 31, 1997, shows the "BOARD" concludes on page 2, that Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice.

By law, the error or injustice for this complaint, is shown in the United States Memorandum of Law in Support of Motion to Dismiss... which shows, the United States found: Major Whigham chose not to include a comment about nipple shadows that by law under the Provisions of Title 10 USC, Section 1552 were required to be corrected for medical reviews using Malcolm Grows post treatment records.

As a matter of law, a health care professional is not allowed to omit radiographic findings that by statute were under request for correction. By law, health care professionals are required to use the same level of care that any other competent professional would use to report radiographic findings. See Doctor Ruxer's letter dated 27 September 1989 for reports of radiographic findings by other health care professionals at Malcolm Grow from 1978 through 1981 and 1987/1988.

Facts for the Board concludes, in the Addendum to Record of Proceedings… dated 31 March 1997 shows, the United States continued to refuse correction of Major Whigham's omission. And that, the United States as a matter of law requested Summary Judgment 22 October 1997 with facts under law showing Major Whigham chose to exclude a comment about nipple shadows while knowing as a matter of law, Ms. Edwards requested correction of Major Whigham's omission 28 October 1992.

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[2] this test for timeliness. Whether or not this was the correct standard to use, however, has no effect on this As will be discussed infra, it may have been an error for AFBCMR to use court's FOIA analysis.

VIII. Medical Facts for the 1986 Omission.

1. By law, Malcolm Grow's medical records should have been free of omissions for adjudication of entitlements by the BVA and independent doctors from February 10, 1986 through 06/15/94. See enclosed June 18, 1991 VA decision; Respondent-Appellee's Motion to Dismiss…, Dated January 19, 1993; Statement of the Case for Malcolm Grow's record in review by the VA and VA rating decision given 06/15/94.

2. The doctors who reviewed Malcolm Grow's medical records gave opinions without stating under law, they were aware of the omission for the 1986 issue. See Doctor Ruxer medical finding, dated 27 September 1989 and Doctor Schoenberger's medical finding dated 5 December 1990. Doctor Freedman is a radiologist

who reported radiographic findings, as a professional, upon reviewing duplicate copies of Malcolm Grow's 1986 radiology film for the late MSgt. Hartwell E. Edwards. So the issue of law remains, if Defendants refuse to correct Major Whigham's omission how can they claim the medical reports, given to them by Plaintiff affirm Major Whigham's 1986 medical omission does not create an that Plaintiff should receive merit for? With the evidence of record being that which Plaintiff have submitted to affirm the omission.

3. Facts based on the uncorrected 1986 radiology record shows, Doctor Ruxer states : Prior to Ms. Edwards discovering the omission that the 1986 radiographic record for Major Whigham is the interval radiology record that precludes a finding for a service-connected condition that accelerated death unless such disability affected a vital organ… The civil record affirms MSgt Edwards died from lung cancer.

4. Doctors Ruxer and Schoenberger gave medical opinions for Malcolm Grow's uncorrected post treatment records, without benefit under federal law of knowing Major Whigham chose not to include a comment about nipple shadows or evaluate nodular densities to affirm a finding for nipple shadows. Facts under federal law shows: Malcolm Grow's 1986 radiology record has never corrected to show a finding for Plural thickening and two 1cm nodular densities for evaluation on whether or not the nodular densities found are consistent with nipple shadows. Doctor Freeman's medical report suggests Malcolm Grow should have used nipple markers in 1986 to affirm whether or not the nodular densities omitted from the 1986
medical report represent shadows or a condition that accelerated death by affecting a vital organ….

5. The United States admitted in their Memorandum of Law dated 22 October 1997, that Major Whigham chose to omit medical facts under review by the Department of Veterans Affairs. Thereby affirming the post treatment medical records given to the VA for service-connected entitlements

shows a contradiction/dispute for the evaluation of nodular densities, with facts in omission and Plaintiff requesting a medical records correction, 28 October 1992.

See enclosed notice to VA requesting a waiver of the three year statute of limitation law dated 1 May 1990. The 1 May 1990 letter shows Ms. Edwards states, Doctor Ruxer 27 September 1989 letter opinions "I have difficulty connecting in 1978 and 1981 with later abnormalities on the chest x-ray noted in late 1987 and early 1988". There is in the clinical record (for Major Whigham) a chest x-ray report dated 10 February 1986 that reads **"standard radiographs of the chest in the frontal and lateral projections shows no abnormality...".** The civil record before United States District Court of Maryland shows: There is no evidence from Defendants to affirm whether or not Major Whigham found nodular densities in 1986 or if, he evaluated nodular densities based on Defendants contentions for the 1986 issue. Defendants assert in the Addendum to Record of Proceedings that the nodular densities found by Doctor Freedman are consistent with nipple shadows and do not represent a chronic condition directly related to the tumor that caused death. See Defendant's Addendum to Record of Proceedings, DKC-97-1533. Plaintiff believes if the omission had been corrected during the time-period of 1992-1994, the corrected medical record would have aided her case before the VA for primary cause of death based on the longevity of the nodular densities.

6. After receiving the June 18, 1991, VA denial with omission using Major Whigham's 1986 radiology report with no medical facts included in this finding for Doctor Freedman's 16 April 1990 medical report, by application under federal law, Ms. Edwards asked Defendants to correct Major Whigham's 1986 omission.

IX. Judgment.

This complaint is for Judgment under federal law, for Defendants unlawfully denying correction of Major Whigham's omission - Malcolm Grows 1986 post treatment medical records. To include Defendants denying Plaintiff's reconsideration request with the civil record affirming United States District Court of

Maryland remanded the civil complaint back to AFBCMR upon discovering Defendants violated federal law by importing a reasonable person test in Title 10 when denying Plaintiff's lawful correction request. Request Judgment for monetary relief based on facts in evidence that Defendants could have avoided this lawsuit by complying with the FOIA request DKC-95-3115 for records in support the Board's subjective evaluation or Defendants could have released the 1986 lateral x-ray film when the "Board" concluded: Plaintiff's civil record raise no issues of error or injustice that requires resolution on the merits. See Defendant's "Addendum To Record of Proceeding".

Plaintiff's filed the request for concurrent jurisdiction requesting Judgment as a matter of law FOR:

"Defendants being required to release a copy of all of Malcolm Grow's 1986 frontal (PA) and lateral 1986 chest x-ray film for the late MSgt Edwards; used by the "Board to determine (for the remanded complaint): Plaintiff's evidence in DKC-95-3115 did not raise issues of error or injustice which requires resolution on the merits of Plaintiff's civil claim". And a copy of all medical reports written by Major Cliff Whigham for the 1986 issue.

X. Relief Sought.

This case is for monetary relief in the amount of 3.5M, based on medical facts in omission when Malcolm Grow Medical Center released MSgt Edwards medical records for Department of Veterans Affairs review from 31 October 1988 through 06/15/94. Relief is sought for Defendants admissions in the Memorandum of Law..., dated 22 October 1997, showing Major Whigham chose to not comment on medical facts under request for correction with Defendants wrongfully refusing correction by asserting, Plaintiff evidence does not raise issues of error or injustice that requires resolution on the merits. Relief is sought for Defendants unlawfully denying correction of Major Whigham's omission with the issue of law being Plaintiff requested correction while the medical records were being reviewed by Department of Veterans Affairs for Primary cause of death. Relief is sought for errors under federal law and statute violations used adversely against Plaintiff when denying correction of the military record.

Ms. Edwards affirm she filed the request for correction under statute/within the three-year timeframe for knowledge of Major Whigham's omission. With facts before the Court affirming Defendants unjustifiably denied correction as untimely, 11 October 1994. Ms. Edwards submitted Doctor Freedman's 16 April 1990 finding to AFBCMR requesting correction of the omission for Plaintiff's COVA case, 28 October 1992. The civil record under request for concurrent jurisdiction shows, Defendants had knowledge of their wrongful actions when adversely affirming Plaintiff's evidence does not raise issues of error or injustice…, with the issue of law being: United States District Court of Maryland remanded the civil complaint back for further proceedings based on Plaintiff's record amendment request.

Enclosed is a copy of the certified notice sent to the United States, dated 28 September 1998 and 16 October 1998 for right to sue under statutes for federal violations of constitutional laws that govern the request for correction of Malcolm Grows 1986 radiology report. This suit is for monetary relief, based on facts under law for correction of Malcolm Grows 1986 radiographic report that was given to the VA by Malcolm Grow for adjudication of entitlements from 1988 through 19 January 1993. And for, Defendants refusal to correct Major Whigham's omission (material facts in review from 1988-1993) with Department of Veterans Affairs denying Plaintiff claim for Primary cause of death 06/15/94 while reviewing Malcolm Grows uncorrected Post Treatment medical records.

Myra R Edwards
(Signature)

24 Dec 1998
(Date)

Pro Se Representative, Myra R. Edwards, 703-806-3425.

CERTIFICATION OF SERVICE

I certify that on 24 December 1998, I mailed twenty (23) copies of this Complaint and attachments to Office of the Clerk, United States District Court of Maryland for service on all addressees as shown below. This complaint is being sent by priority mail, postage paid by Myra R. Edwards.

Myra R. Edwards

Lynne A. Battaglia,
United States Attorney
ATTN: Larry Adams,
Assistant United States Attorney
6625 United States Courthouse
101 West Lombard Street
Baltimore, MD 21201

Honorable Janet Reno,
Attorney General
Department of Justice
10th and Constitution Avenues, NW
Washington, DC 20530

Department of the Air Force
AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, MD 20762-7002

Department of the Air Force
Legal Office
Malcolm Grow USAF Medical Center
Andrews AFB, MD 20331-5300

Department of the Air Force
Headquarters Air Force
Military Personnel Center
Randolph AFB, TX, 78150-6001

Honorable Paul Sarbanes
United States Senator
Tower 1, Suite 1010
100 S. Charles Street
Baltimore, MD 21201-2700

Clerk, United States District Court of
Maryland
6500 Cherrywood Lane
Greenbelt, Maryland 20770

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS
v. CIVIL ACTION NO. DKC-98-4190

DEPARTMENT OF THE AIR FORCE
AFBCMR
MALCOLM GROW USAF MEDICAL CENTER:

..000..

ORDER

On December 28, 1998, Plaintiff filed the instant complaint for damages pursuant to 28 U.S.C. § 1346, "for a decision on whether or not the United States unjustifiably denied corrections of her husband's medical record, focusing in particular on certain entries made by a Major (Dr.) Whigham at the Malcolm Grow Air Force Medical Center in 1986. (Paper No. *1.)* Ms. Edwards has submitted the $150.00 filing fee and on December 29, 1998, the Clerk of the Court issued summons to the Plaintiff. (Paper No. 2.)

A brief review of Plaintiff Is litigation history in this Court is in order. On October 16,'1995, she filed suit under the Freedom of Information Act ("FOIA") seeking: (1) to compel a response to an FOIA- request before the Air Force Board for the Correction of Military Records ("AFBCMR");

(2) to overturn the AFBCMR decision denying the amendment of Dr. Whigham's 1986 report; and (3) damages arising out of the AFBCMR's actions or inactions. See Edwards v. Dep't of the Air Force, et al., Civil Action No. DKC-95-3115. On October 15, 1996, this Court dismissed the FOIA and damage claims, but remanded to the AFBCMR that aspect of the complaint, which sought review of the previous decision to refuse an amendment to Master Sergeant Edward's medical record.

The AFBCMR subsequently reviewed its prior decision and held that Ms. Edwards, evidence did not warrant a change to her husband's medical records. With the entry of that AFBCMR decision, Plaintiff filed a new complaint in this Court seeking correction of her husband's military records and damages allegedly resulting from the Air Force's refusal to correct her husband's records and its refusal to respond to the FOIA request. See Edwards v. Dep't of the Air Force, et al., Civil Action No. DKC-97-1533. In a September 22, 1998 Memorandum Opinion, the, undersigned judge concluded that the AFBCMR's finding' was neither arbitrary nor capricious and was well supported by more than substantial evidence. Consequently, the Motion for Summary Judgment filed by Defendants Department of the Air Force (AFBCMR), Malcolm Grow USAF Medical Center was granted, and judgment was entered in their favor. Plaintiff did not take an appeal of that decision.

The AFBCMR held that Dr. Whigham's 1986 report regarding Master Sergeant Edward's x-ray was accurate and required no amendment.

Turning to Ms. Edwards' most recent complaint, she again names as Defendants the Department of the Air Force (AFBCMR) and the Malcolm Grow USAF Medical Center. The specific claims alleged and relief sought by Ms. Edwards are the same as those set out in' Edwards v. Dep't of the Air Force, et al., Civil Action No. DKC-97-1533.

Such a prior federal judgment may preclude the Plaintiff from seeking federal review over her claims if certain elements are shown. Under the doctrine of res judicata, if Ms. Edwards' new claim: (1) arose out of the same transaction or series of transactions as the claim resolved by the prior judgment; (2) concerns the identical parties (or their privies) named in the prior complaint; and (3) the prior judgment was a final judgment on the merits, she is estopped from relitigating her new complaint. See Keith v. Aldridge, 900 F. 2d 736, 740 (4th Cir.) cert. denied, 498 U.S. 900 (1990)

Plainly, Ms. Edwards has already litigated her claims against the Defendants before this Court. Because the claims set out herein may be subject to res judicata, given the final, unappealed decision of this Court in Civil. Action No. DKC-97-1533, the Plaintiff shall be required to show cause why this cause of action should not be dismissed.

Accordingly, IT IS this 10th day of January 1999, by this Court hereby ORDERED that:

1. Plaintiff IS GRANTED an additional TWENTY (20) DAYS from the date of this Order to SHOW CAUSE why her complaint should not be dismissed. Plaintiff is cautioned that her failure to file a timely and complete response will result in the dismissal of her cause of action; and

2. The Clerk of the Court MAIL a copy of this Order to the Plaintiff and to Assistant United States Attorney Larry Adams, 6625 United States Courthouse, 101 *W.* - Lombard Street, Baltimore, Maryland 21201.

/s/ ______________________

Deborah K. Chasanow

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Myra R. Edwards

Plaintiff, Civil Action No. DKC-98-4190

v.

DEPARTMENT OF THE AIR FORCE
AFBCMR
&
MALCOLM GROW USAF MEDICAL CENTER

Defendants.

RESPONSE TO US DISTRICT COURT OF MARYLAND'S ORDER FOR JUST CASE ISSUED 11 JANUARY 1999

By ORDER of the U.S. District Court of Maryland, Myra R. Edwards, pro se representative is before the Court to show just cause for the instant complaint filed December 28, 1998, to request Judgment for damages pursuant to 28 U.S.C. Section 1346. This complaint before the Court is governed by Federal law and regulatory statutes for: Errors as a matter of law under the statute of limitation law used by the United States to wrongfully deny correction of Major Whigham's 1986 radiographic omission as untimely, 14 October 1994, 11 October 1994, 22 November 1994 and 31 March 1997. See application for correction, based on Doctor Freedman's Medical finding for date of discovering Malcolm Grow's 1986 radiographic omission, including correction denials from the United States, entries 3, 9, 6, 17, 19, and 28.

Facts for unlawfully denying correction before the U.S. District Court of Maryland are: The United States under Federal statute erred 14 October 1994 and 11 October 1994 based on laws that govern correction of military records, if application is made within statute. Just cause for this civil complaint is under the provisions of 28 U.S.C. Section 1346 and is based on Federal laws that govern and regulate statutes for the lawful correction request. See entry 3 for the lawful correction request, entry 9 for discovery of the 1986 radiographic omission and entries 19, 6, 17 and 28 for errors as a matter of law, denying correction of Major Whigham's 1986 radiographic omission.

Prior to this complaint being filed 28 December 1998, for violations under Federal law and application of federal statutes, the civil record shows: Ms. Edwards asked the U.S. District Court of Maryland to review the United States 22 November 1994 reconsideration denial based on Ms. Edwards request under FOIA for records from the United States that would support the sovereignty's assertion that Ms. Edwards had knowledge of Major Whigham's 1986 radiographic omission for Malcolm Grow's 1986 radiographic medical report. See enclosures 31, 32, 33, 34, 35 and 36 for records in support of the United States assertions and denials under FOIA for the release of medical records in support of the United States assertions of the date for discovering Major Whigham's 1986 radiographic omission. Also, see civil action DKC-95-3115, entry 15 for Memorandum Opinion from the U.S. District Court of Maryland. ORDER of the U.S. District Court For the District of Maryland for civil action DKC-95-3115, issued the 11th day of October 1996, shows: The Court granted summary judgment in-part to the United States, based on claims for correction before the U.S. District Court of Maryland; including the Court's finding that, the United States did not improperly withhold agency records under FOIA for Ms. Edwards request of records to be released, that dispute or challenge the date Ms. Edwards affirms for knowledge of Major Whigham's 1986 radiographic omission. See reconsideration denial dated 22 November 1994, entry 28 and U.S. District Court's FOIA analysis under civil action DKC-95-3115, entry 15. Facts based on the U.S. District Court of Maryland's 11 October 1996 finding (entry 15) is: The United States under law did not withhold agency records discovered the omission based on the United States assessment for the correction denial.

As a matter of law, the U.S. District Court ruled under the Freedom of Information Act (FOIA) for civil action DKC-95-3115 that: The United States did not improperly withhold agency records; thereby showing under law, the United States was not compelled to release records that either support or deny Ms. Edwards affirmed date for discovering Major Whigham's 1986 medical omission. Ms. Edwards requested administrative review as a matter of law for arbitrary and capricious findings based on the United States refusal to release medical records, related to facts for the correction denial. Thus, the U.S. District Court of Maryland remanded the case for correction to AFBCMR for further proceedings. The United States reviewed the subject case, based on the U.S. District Court's ORDER issued 11 October 1996. The Board states, after considering the application for correction the United States was not persuaded that the record raised issues of error or injustice which required resolution on the merits. See entry 17. This finding by the United States shows the sovereignty on 31 March 1997 still refuse to correct the 1986 radiographic record based on the lawful request for correction.

Under Federal law, the United States correction denial shows: There is no evidence to dispute Ms. Edwards date for discovering Malcolm Grow's 1986 radiographic omission. As a matter of law, Ms. Edwards is before the Court because the United States erred under statute 11 October 1994 and 14 October 1994 by denying correction of Major Whigham's 1986 radiographic omission as untimely. The United States admits in the Motion to Dismiss... and Memorandum of Law... entry 2 on page 7 that Major Whigham chose to omit radiographic findings that Ms. Edwards requested under the statute of limitation law be corrected. Facts based on the correction denial shows United States refused under statute to correct Major Whigham omission, 11 October 1994, 14 October 1994, 22 November 1994 and 31 March 1997. Under law the United States have refused to resolve the issue based on the merit of the claim, as shown in the Addendum To Record of Proceedings, entry 17 and Motion to Dismiss… entry 2. Request this court also review, entry 3 for Application for Medical Correction, entry 6 for AFBCMR's 11 October 1994 denial, and entry 19 for AFBCMR denial of the records correction to Honorable Paul Sarbanes. The U.S. District Court of Maryland denied relief for damages under civil actions DKC-95-3115 and DKC-97-1533. See entry 15 and enclosed ORDER and Memorandum Opinion from the U.S. District Court Of Maryland dated 22 September 1998. Therefore, Ms. Edwards is before the Court to DEMAND relief under the provisions of 28 U.S.C. section 1346 for all errors under Federal law based on the correction denial.

The U.S. District Court ruled the FOIA complaint, must establish: Whether or not there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted. See civil action DKC 95-3115, entry 15 for the U.S. District Court's 11 October 1996 ORDER and Memorandum Opinion.

After the U.S. District Court remanded correction of the civil record to the United States; civil action DKC 97-1533 shows the United States continued to wrongfully deny correction, by stating: The Board considered the application and was not persuaded that the record raised issues of error or injustice which required resolution on the merits. The Addendum to record shows the Board chose to deny the application on the basis of timeliness. See Addendum To Record Of Proceedings, entry 17 for violations under Federal law by the United States while knowing Major Whigham chose to omit radiographic findings that were under request for correction. Also review Motion to Dismiss… entry 2. The claim of the United States in the Addendum To Record of Proceedings … is: The Board concluded that insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. Accordingly, the U.S. District Court of Maryland granted the United States Motion for Summary Judgment, the 22nd day of September 1998. The U.S. District Court of Maryland opined 22 September 1998 in Courts ORDER and Memorandum Opinion on page 2 … if there clearly exist factual issues "that properly can be resolved only by a finder-of fact because they may reasonably be resolved in favor of either party," then summary judgment is inappropriate. The United States held the radiographic omission of medical facts, would not change the medical reviews given to Ms. Edwards for Veteran entitlements, while refusing to correct the lawful request for merit based on regulatory statutes of claims before the VA. See enclosed U.S. District Court's ORDER for Judgment in favor of the United States issued 22 September 1998.

The U.S. District Court of Maryland also opined on page 2 of the 22 September 1998 ORDER, that, "When ruling on a motion for summary evidence has been presented to demonstrate the existence of probable error or injustice. Accordingly, the U.S. District Court of Maryland granted the United States Motion for Summary Judgment, the 22nd day of September 1998. The U.S. District Court of Maryland opined 22 September 1998 in Courts ORDER and Memorandum Opinion on page 2 … if there clearly exist factual issues "that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party," then summary judgment is inappropriate. The United States held the radiographic omission of medical facts, would not change the medical reviews given to Ms. Edwards for Veteran entitlements, while refusing to correct the lawful request for merit based on regulatory statutes of claims before the VA. See enclosed U.S. District Court's ORDER for Judgment in favor of the United States issued 22 September 1998.

The U.S. District Court of Maryland also opined on page 2 of the 22 September 1998 ORDER, that, "When ruling on a motion for summary judgment, the court must construe the facts alleged in the light most favorable to the party opposing the motion". … Therefore, on those issues the nonmoving party will have the burden of proof, as it is his or her responsibility to confront the motion for summary judgment with an affidavit or other similar evidence. Ms. Edwards *affirm her response to the Motion to Dismiss*... and Memorandum of Law, based on the United States Motion, see entry 2 shows: Ms. Edwards affirmed before the U.S. District Court of Maryland that Doctor Freedman's 16 April 1990 radiology report was given to the United States for knowledge of Major Whigham's 1986 radiographic omission. Ms. Edwards also affirmed before the U.S. District Court of Maryland that she gave the application for correction to the United States based on provisions under Federal law. And that the application was made within statute. The U.S. District Court of Maryland in the ORDER and Memorandum Opinion issued 11 October 1996 state on page 11 (The AFBCMR) contends that the proper inquiry for time bar purposes is when the alleged error or injustice was discovered or reasonably could be discovered. Under Federal law, Ms. Edwards Whigham's 1986 omission, based on this Courts FOIA analysis showing the United States is not withholding agency records. See ORDER and Memorandum Opinion of the Court issued 11 October 1996.

The U.S. District Court of Maryland ORDER and Memorandum Opinion issued 22 September 1998 on page 7 states, ... The AFBCMR's 1994 refusal was based on timeliness, but the Board also noted that it had reviewed the merits of Plaintiff's request and decided that the request was without merit. Ms. Edwards is before the Court under the provisions of 28 U.S.C. section 1346 for judgment on whether or not her complaint is meritorious based on the provisions of Federal law. Ms. Edwards contends, the United States actions based on the correction denial was unjustifiable. And that relief is justified for monetary expenses accrued as: (1) A result of having medical records reviewed with omissions; and (2) for wrongful acts of the Government based on federal laws and regulatory statutes governing correction of Major Whigham's 1986 radiographic omission.

This complaint before the United States District Court of Maryland is for action under Federal law that shows: The United States on 14 October 1994, 11 October 1994, 22 November 1994 and 31 March 1997 unjustifiably denied correction of Malcolm Grow's 1986 radiographic omission as untimely, and denied merit based on Doctor Freedman's medical finding for Ms. Edwards lawful records correction request of Malcolm Grows 1986 radiology record under review by independent doctors for Veterans entitlements. This complaint is also for facts under law showing correction was denied under federal law with no evidence or proof to dispute Ms. Edwards' date for discovering Major Whigham's 1986 omission. Finally this complaint is for denying correction of the 1986 omission as untimely under statute.

Facts that denied justice based on the United States assertions are as follows: (1) Application for correction was first denied as untimely, 14 October 1994 and 11 October 1994. See entry 19 and 6. With facts under law showing the United State asserts, the applicant did not file the request for correction within three years after the alleged discovery of error or injustice. See Ms. Edwards correction application, entry 3 that shows Ms. Edwards states: As the widower of Hartwell E. Edwards, request the Board and Corrections Section under the provisions of Title 10, U.S.C. Section 1552, correct the 1986 chest x-ray report from Malcolm Grow USAF Medical Center, based on Doctor Freedman's 1990 radiographic finding. Also see Doctor Freedman's 1990 radiographic finding entry 9. (2) The United States denied the reconsideration request 22 November 1994 by asserting, the application for correction dated 28 October 1992 asserts a date of discovery of April 16, 1990; which would if correct make the application timely. See entry 28 for facts under Federal law showing correction is being denied based on the date Ms. Edwards affirm to have discovered Major Whigham's 1986 radiographic omission. Under law, the United States 22 November 1994 correction denial shows: The sovereignty is challenging the date given to Ms. Edwards for facts under law showing the request for correction was filed within statute.

November 22, 1994, the United States allege: Correction is being denied because, we cannot excuse Ms. Edwards failure to submit the application for correction beyond the three-year limitation for discovering Malcolm Grow's 1986 radiographic omission. Pursuant to 28 U.S.C.

Section 1346 Ms. Edwards filed civil claim DKC-98-4190 for justice based on facts under Federal law showing the application for correction was submitted October 28, 1992 and that the date for discovering the error or omission is April 16, 1990. Thereby, showing as a matter of law, the United States unjustifiably denied correction of Major Whigham's 1986 radiographic omission. See civil action DKC-95-3115, civil action DKC-97-1533, and the United States Addendum To Record of Proceedings Air Force Board For Correction Of Military Records, entry 17.

Ms. Edwards is before the U.S. District Court of Maryland, to request a ruling based on errors under Federal law and regulatory statutes used by the United States to deny correction of Major Whigham's 1986 radiographic omission. Ms. Edwards complaint under the provisions of 28 U.S.C. Section 1346 is for: Justice under law based on facts before this Court, see DKC-98-4190 and entry 17, Addendum To Record Of Proceedings… showing the United States asserts, the sovereignty reviewed the subsequent request for correction based on the U.S. District Court of Maryland's 11 October 1996 ORDER, and that prior to its denial decision given 31 March 1997 in the Addendum To Record of Proceedings, state, the Board is not persuaded that the record for correction raise issues of error or injustice which require resolution on the merits of the lawful request, filed in accordance to statute for discovering Malcolm Grows 1986 radiographic omission.

Ms. Edwards is before the Court for Judgment on whether or not the United States erred under statute 14 October 1994, 11 October 1994, 22 November 1994 and 31 March 1997 based on facts under Federal law for the correction denial. Facts before this Court shows the United States claim, Ms. Edwards requested correction beyond the three-year statute of limitation law.

See civil complaint, DKC-98-4190, "Claim Under Title 10, Armed Forces Subtitle A Military Law, Section 1552 filed 28 December 1998 with attachments for entries associated with "Response To U.S. District Court Of Maryland's ORDER For Just Cause."

Ms. Edwards affirm this complaint before the U. S. District Court of Maryland, clearly shows the United States wrongfully denied correction of the 1986 omission 14 October 1994, 11 October 1994, 22 November 1994 and 31 March 1997 based on Federal law and regulatory statutes used by the United States to deny correction as untimely. This complaint is also for justice as a matter of law, based on the correction request for medical facts that were adjudicated by the Department of Veterans Affairs with omissions for determination of Federal entitlements.

Myra R. Edwards 15 Jan 1999
(Signature) (Date)
Pro Se Representative, Myra R. Edwards, 703-806-3425.

CERTIFICATE OF SERVICE

I certify that on 15 January 1999, the response to the U.S. District Court of Maryland's ORDER for Just Cause was mailed to all addressees as shown below. This response is being mailed by first class mail, postage paid by Myra R. Edwards.

Myra R. Edwards
(Signature)

Lynne A. Battaglia,
United States Attorney
ATTN: Kaye Allison,
Assistant United States Attorney
Certified Mail Article #Z 571 694 604
604 United States Courthouse
101 West Lombard Street

Baltimore, Maryland 21201

Honorable Janet Reno,
Attorney General
Certified Mail Article #Z 571 694 605
Department Of Justice
10th and Constitution Avenues, N.W.
Washington, DC 20530

Assistant United States Attorney
Larry Adams
Certified Mail Article #Z 571 694 606
6625 United States Courthouse
101 W. Lombard Street
Baltimore, MD 21201

AFBCMR
Certified Mail Article #Z 571 694 607
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, MD 20762-7002

Department Of The Air Force
Certified Mail Article #Z 571 694 608
Legal Office
Malcolm Grow USAF Medical Center (MAC)
Andrews AFB, MD 20331-5300

Office of the Clerk,
United States District Court
For the District of Maryland
6500 Cherrywood Lane
Greenbelt, MD 20770

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS

v. CIVIL ACTION No. DKC-98-4190

DEPARTMENT OF THE AIR FORCE
AFBCMR, et al.
MALCOLM GROW USAF MEDICAL CENTER

ORDER

For the reasons stated in the foregoing Memorandum, it is, this 29th day of January 1999, hereby ORDERED that:

1. This cause of action IS DISMISSED as barred under the doctrine of res judicata.
2. The summons issued by this Court on December 29, 1998, IS QUASHED;
3. The Clerk of the Court CLOSE this case; and
4. The Clerk of the Court MAIL copies of this Order to Plaintiff and to Assistant United States Attorney Larry Adams, 6625 United States Courthouse, 101 W. Lombard Street, Baltimore, Maryland 21201.

"s/ ________________________"
Deborah K. Chasanow
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS
v. CIVIL ACTION No. DKC-98-4190
DEPARTMENT OF THE AIR FORCE
AFBCMR, et al.
MALCOLM GROW USAF MEDICAL CENTER

MEMORANDUM

On December 28, 1998, Myra Edwards filed a complaint for damages challenging the refusal of the Defendants to correct entries made in her husband's medical record when he was treated at the Malcolm Grow United States Air Force Medical Center in 1986. Because this Court was of the opinion that such a claim had already been finally litigated in this Court, on January 11, 1999, the undersigned judge ordered the Plaintiff to show cause why her complaint should not be dismissed.

On January 19, 1999, Ms. Edwards filed a response. Paper No. 5 – Plaintiff's Response – JUST CAUSE.) While difficult to decipher, it appears that her answer is not entirely responsive to this Court's claim and issue preclusion in wrongfully denying correction of a report entered in her husband's medical record. (Id.) She further disputes the Air Force Board for the correction of Military Records' ("AFBCMR") "addendum" decision to deny the correction of the records on the basis of timeliness.[1] (Id.)

"Under res judicata, a final judgment on the merits bars further claims by the parties or their privies based on the same (1979) (citation omitted). The parties in this case and in Edwards v. Dep't of the Air Force, et al., DKC-97-1533 are identical. The legal claims and the factual allegations are identical. Under Fed. R. Civ. P. 60(b) (3) an independent action to set aside a judgment may be brought only where there are "'injustices which . . . are deemed sufficiently gross to demand a departure' from rigid adherence to the doctrine of res judicata." United States v. Beggerly, _____ U.S. _____, _____, 118 S. Ct. 1862, 1867 (1998) (quoting Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 244 (1944). This is not such a cause of action.

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[1] Ms. Edwards challenges that AFBCMR argument regarding the date she discovered the alleged error to the 1986 medical report and the date that she first submitted her application for correction. (Paper No. 5 at pp. 4-5, 7 & 9-14.)

As already noted, the AFBCMR decision to deny amendment to Master Sergeant Edwards' medical report was previously reviewed by this Court in DKC-97-1533. [2] In that case the undersigned judge found that Ms. Edwards had failed to demonstrate a sufficient basis for setting aside the AFBCMR decision and further concluded that the AFBCMR decision in 1997 was "supported by more than substantial evidence."

It is well established that a court has broad, inherent power sua sponte to dismiss an action, or part of an action, which is frivolous, sham, vexatious, or brought in bad faith. Crowley Cutlery Co. v. United States, 849 F.2d 273, 277 (7th Cir. 1988) (federal district judge has authority to dismiss a frivolous suit on her own initiative); Brown v. District Unemployment Compensation Board, 411 F. Supp. 1001 (D.C. 1975) district court has inherent power to control the judicial process and dismiss frivolous or harassing action sua sponte); see also 28 U.S.C. section 1915 (e) (2).

Ms. Edwards has attempted to litigate the same core claim before this Court for over three years. While I understand that she may be dissatisfied with the prior ruling of this Court in DKC-97-1533, the appropriate way to challenge district court decisions is by noting an appeal, not be refiling the case. Plaintiff had the opportunity to appeal her case within the time period allowed under appellate rule. She chose not to do so. Permitting her to proceed with this action would accomplish nothing other than waste the resources of the Court, subject the Government to the expense and trouble of relitigating the case, and most likely subject Ms. Edwards to costs and possibly sanctions. See 28 U.S.C. section 1920; Fed. R. Civ. P. 11(c); 54(d).

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[2] Plaintiff misunderstands the basis for the AFBCMR findings. Its first decision, entered in 1994, was to refuse to amend the record. That determination was based in part on timeliness, but the Board additionally reviewed the merits of

Accordingly, a separate Order will be entered dismissing this action.

Jan. 29, 1999
Date

"s/ ______________________"
Deborah K. Chasanow
United States District Judge

Ms Edwards' request and concluded that no change was warranted. A subsequent Board decision to deny the amendment, handed down in March 1997, was likewise based on the merits of Plaintiff's claim. See Edwards v. Dep't of Air Force, Civil Action No. DKC-97-1533 at Paper Nos. 9 & 15.

1120 Windemere Court
Fort Washington, MD 20744
15 September 1999

Department of the Air Force
Headquarters Air Force
Military Personnel Center
Randolph Air Force Base, TX 78150
Certified Request Article # P 230 776 268

Department of the Air Force
AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews Air Force Base, MD 20762-7002
Certified Request Article # P 230 776 269

Department of the
Legal Office
Malcolm Grow USAF Medical Center
Andrews Air Force Base, MD 20331-5300
Certified Request Article P 230 776 270

CERTIFIED REQUEST - RETURN RECEIPT
REQUESTED
ABOVE ADDRESSEES

OFFICIAL NOTICE OF RIGHT TO SUE UNITED STATES BASED ON NEWLY DISCOVERED EVIDENCE USED ERRERONUSLY TO MISLEAD UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND WHO GRANTED SUMMARY JUDGMENT BASED ON AFBCMR's REVIEW OF THE REMANDED CIVIL RECORD TO AFFIRM MAJOR WHIGHAM DID NOT ERROR

WHEN OMITTING A COMMENT ABOUT NODULAR DENSITIES
SEE COURT ORDERS FOR DKC-95-3115 AND DKC-97-1533

To the above addressees,

This certified notice is being sent to notify all interested parties that a claim will be submitted against AFBCMR and directing agencies Malcolm Grow USAF Medical Center (collectively referred to as the United States) for violations under Title 10 Armed Forces Subtitle A Military Law, Section 1552(4) (b) and United States Code Annotated, Title 28 Section 1346, 242 subsec. (a) (2). This law suit will be based on AFBCMR capriciously misleading the United States District Court of Maryland in the remanded civil complaint DKC-97-1533 to affirm: The Board found no error or injustice warranting correction of the late Mr. Edwards 1986 radiology record. See Addendum To Record Of AFBCMR's Proceedings, RESUME OF CASE, page 1 beginning with: The Board considered the application and was not persuaded that the record raised issues of error or injustice which required resolution on the merits. Also see AFBCMR's MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS... page 3 for conclusions by the Board. Page 3, shows AFBCMR states: In- Ms. Edwards case, the Board found no error or injustice warranting correction of the late Mr. Edwards' records **but elected to unjustifiably decide the case on timeliness, see enclosed letters sent to Senator Paul Sarbanes and Ms. Edwards in 1994.** United States District Court of Maryland reviewed the civil complaint (DKC-95-3115) based on AFBCMR assertions for timeliness. Timeliness based on error under Federal Law is discussed later.

The enclosed letter from AFLSA/JACL shows the issue before Judge Wiese, United States Court of Federal Claims Associate Judge in 98-930C concerns AFBCMR's Exhibit at 17 (for Addendum To Record Of Proceedings). The issue of law argued before Judge Wiese was whether or not the BOARD reviewed the contested 1986 lateral and PA x-ray film used by AFBCMR to claim in 1997, the remanded issues before Judge

Chasanow (DKC-97-1533) affirm: Major Whigham's omission did not cause the 1986 radiology record for the late Mr. Edwards to be in error.

Ms. Palko, attorney for the United States, argued before Judge Wiese that AFBCMR's Addendum To Proceeding affirm the Board reviewed the contested 1986 radiology film for conclusions as a matter of law based on finding: **"We do not find it unusual that Malcolm Grow Medical Center did not note the presence of nodular densities/nipple shadows on the PA view of the 1986 x-ray film since the x-ray film taken on the same date from the lateral view did not reveal the nodular densities/nipple shadows".** The issue of law for this finding is: Upon talking with the medical examiner who worked the case for the United States; it is discovered that the AFBCMR's conclusions for the remanded civil record were based on the 1986 radiology report Ms. Edwards' is contesting rather than a review of the lateral chest x-ray film.

The civil record before Judge Chasanow in DKC-95-3115 and DKC-97-1533 affirm: Ms. Edwards by application of law in 1992 requested the records correction through AFBCMR based on discovering 16 April 1990 Major Whigham omitted a notation for nodular densities **revealed only by reading the late Mr. Edwards 1986 lateral and PA x-ray film.**

AFBCMR's MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS (DKC-97-1533) ... page 6, shows: AFBCMR affirm before Judge Chasanow that Summary Judgment is Appropriate Because There are No Material Facts in Dispute. Judge Chasanow ORDER and MEMORANDUM OPINION, DKC-97-1533, affirm Summary Judgment was granted to the United States 22 September 1998. Ms. Edwards received AFLSA/JACL notification 24 February 1999, based on arguments before Judge Wiese for AFBCMR's Addendum To Record Of Proceedings filed concurrently with claim before United States District Court of Maryland. **For the record,** Judge

Chasanow did not allow Ms. Edwards' to argue the issues of the complaint in court, therefore additional time and money was spent to get the issues of law on record for AFBCMR claiming in DKC-97-1533 Judgment is Appropriate Because There Are No Material Facts in Dispute.

The enclosed letter from AFLSA/JACL affirm on page 2 that an attempt was made based on arguments before Judge Wiese in civil action 98-930C to locate the late Mr. Edwards' 1986 x-ray film. The enclosed letter from AFLSA/JACL on page 2 shows the 1988 and 1986 x-ray film were scheduled for destruction in January 1994.

FOR THE RECORD OF PROCEEDINGS IN DKC-97-1533:

AFBCMR's enclosed ADDENDUM TO RECORD OF PROCEEDINGS affirms on page 2 Under THE BOARD CONCLUDES. That Judge Chasanow should have ruled it was error in 1994 for AFBCMR to import a reasonableness standard into the date Ms. Edwards' discovered Major Whigham, USAF at Malcolm Grow, omitted a comment or notation for nodular densities. The enclosed civil record released to Ms. Edwards for the COURTS ORDER in DKC-95-3115 **affirm Judge Chasanow Opined** it **was error** to import a reasonableness standard into the date of discovery. The finding of the court for civil complaint **DKC-95-3115 affirms Ms. Edwards was denied all monetary relief** with the civil record for **final Judgment** based on Judge Ellis finding for the reasonableness standard in McFarlane v. Secretary of the Air Force being remanded to AFBCMR. See DKC-95-3115 affirming Judge Chasanow opined on page 12: **"It was contrary to law for the AFBCMR to import a "reasonable person" test into section 1552(b). And the statute of limitations on Ms. McFarlane's claim that runs only from the time that she actually discovered that she was receiving a reduced annuity". Therefore in light of Judge Ellis' ruling in McFarlane, this matter will be remanded to AFBCMR for further proceedings.** AFBCMR's Addendum To Record Of Proceedings on page 2 under The Board Concludes that, 2): States, "in view of the Court's ruling (remanding the case to AFBCMR) based on the ruling in McFarlane v. Secretary of the Air Force... AFBCMR affirm Ms. Edwards' civil complaint was thoroughly reviewed based on the evidence of record **with noting the applicant's contentions for the contested 1986 radiology record,** affirm: **"We are again not persuaded that an error or injustice exists in this case". ERROR UNDER FEDERAL IAW:** It's the language AFBCMR used to affirm "Judge Chasanow" ruled in DKC-95-3115 that it was error for AFBCMR to import a reasonableness standard into the date Ms. Edwards discovered Major Whigham's 1986 omission. **FACTS AS A MATTER OF LAW:** "Judge Chasanow" **never** ruled in DKC-95-3115 or DKC-97-1533 or barred civil complaint DKC-98-4190 that it was error for AFBCMR to import a reasonableness standard into the date of discovering Major Whigham's 1986 omission.

The issues of Law for the 1994 correction denial before the Honorable Paul Sarbanes are as follows. DKC-953115 affirms Ms. Edwards claims for damages were dismissed and that, Judge Chasanow remanded the 1994 correction denial to AFBCMR because contrary to law, the Board imported a reasonableness standard into the date of discovering Major Whigham's 1986 omission. Ms. Edwards' civil complaint shows the issue of law for Judge Chasanow's 22 September 1998 ruling is: AFBCMR admit in its Addendum To Record Of Proceedings for this court's ORDER, **it was error to import a reasonableness standard into the date of discovery.** However, DKC-97-1533 affirms Summary Judgment was granted to the United States showing error under Federal Law **if Judge Chasanow** did uphold Judge Ellis finding in McFarlane v. Secretary of the Air Force in either DKC-95-3115 or DKC-97-1533 for Ms. Edwards stated claim.

Admissions before Judge Chasanow in DKC-97-1533: AFBCMR affirm Major Whigham chose to omit a comment about nodular densities/nipple shadows in Malcolm Grows written report for the late Mr. Edwards in 1986. See enclosed MOTION TO DISMISS... AND MEMORANDUM OF LAW IN SUPPORT OF MOTION

TO DISMISS... Page 7 and 8 for AFBCMR's conclusions based on the omission showing the Board assert: "The fact that this doctor chose not to include a comment about nipple shadows does not make the record in error or inaccurate". **Newly discovered facts** for Major Whigham choosing to omit a comment nodular densities/nipple shadows in the late Mr. Edwards medical records. See enclosed letter from AFLSA/JACL, affirming the Board's review for the remanded civil record is based on Major Whigham's 1986 omission. To affirm under Federal Law the military record should not be corrected, this letter also shows the x-ray film for the 1986 issue were destroyed in 1994 by the Air Force. **THE ISSUE OF LAW:** The Board affirm in its Addendum To Record Of Proceedings Ms. Edwards' civil complaint for the contested 1986 radiology record was thoroughly reviewed. However it is now known (24 February 1999) that the Board's conclusions for the correction denial were based on Major Whigham's 1986 omission rather than review of the 1986 radiology film. Ms. Edwards state under Federal Law the newly discovered facts in the letter from AFLSA/JACL affirm there has been **no resolution** under law, to affirm Major Whigham did not error when omitting radiographic data still not apart of the late Mr. Edwards' medical records.

Ms. Edwards finds AFBCMR's 1997 ADDENDUM TO RECORD OF PROCEEDINGS affirms it was the language used that led to an injustice under Federal Law for the wrongful denial of the late Mr. Edwards 1986 military record's correction in DKC-95-3115 and DKC-97-1533. Request review of the following statements based on AFBCMR's correction denial for errors under Federal Law from 1994 through the present:

1. AFBCMR in 1994 denied correction of the 1986 Military record by asserting Ms. Edwards' did not file a timely application. See enclosed letters to Senator Sarbanes and Ms. Edwards in 1994. Facts for the newly discovered evidence is: Major Whigham's omission remains uncorrected showing AFBCMR conclusions for the correction denial for the remanded civil complaint was based on the 1986 radiology report (being contested by Ms. Edwards) rather than a review of the 1986 radiology film. With the issue of law for the granting of summary judgment in DKC-97-1533

being **the 1986 record raise no issues of injustice or error which require resolution on the merits.** See Addendum To Record Of Proceedings, page 1 paragraph 1. To include AFBCMR asserting, Judge Chasanow **ruled** it was error to import a reasonableness standard in to the date of discovery. Ms. Edwards shall bring suit because AFBCMR capriciously denied correction of the military record to include falsely claiming Judge Chasanow RULED to uphold Judge Ellis ORDER in McFarlane v. Secretary of the Air Force. The enclosed adjudicated record and Orders for DKC-95-3115 and DKC-97-1533 affirm AFBCMR was granted Summary Judgment **for all issues of law.** Ms. Edwards will submit the letter from AFLSA/JACL for judgment on the language AFBCMR used to affirm under Federal Law in DKC-97-1533 there were no issues in dispute when Judge Chasanow granted Summary Judgment to United States. Ms. Edwards' new civil complaint will be based on errors under Federal Law, for the 1997 correction denial based on Summary Judgment after discovering 24 February 1999 the Board used the contested record for assurances that there are no Material Facts in Dispute. Ms. Edwards' civil complaint will be for errors under Federal Law in DKC97-1533 for the granting of Summary Judgment using the contested 1986 radiology record (contrary to law). Issues of Law: The United States assert upon review of the remanded record in 1997, Major Whigham's omission does not make the 1986 record in error or create an injustice that Ms. Edwards' should receive relief for. With facts as a matter of law showing it was Major Whigham's contested data used to affirm the uncorrected record does not create an injustice.

2. Newly discovered facts based on the enclosed letter from AFLSA/JACL shows: It was the language used in AFBCMR's Addendum To Proceedings that unjustifiably denied correction of the 1986 Military record based on wrongful assumptions under Federal Law in determining the Board in 1997 reviewed the 1986 x-ray film.

3. **ISSUE OF LAW:** The Addendum To Record of Proceedings on Page 1, paragraph 1 affirms: The Board considered the application based on Judge Chasanow remanding the case to AFBCMR in 1996. Showing the Board state 31 March 1997: "It was not persuaded that the record raised issues of error or injustice which required resolution on the merits. The issue of Law, in DKC-95-3115 is Judge Chasanow remanded the civil complaint based on Judge Ellis ruling in McFarlane v. Secretary of the Air Force. However the remanded case still shows: The U.S. District Court denied all claims for damages to include, the United States District Court Of Maryland Granted Summary Judgment to the United States without upholding Judge Ellis ruling in McFarlane v. Secretary Of The Air Force. DKC-97-1533 affirms Ms. Edwards is being denied correction with admissions before Judge Chasanow in DKC-97-1533 to affirm Major Whigham chose to omit radiographic data that Ms. Edwards' by application of law for civil complaint DKC-95-3115 asked be corrected. DKC-95-3115 and DKC-97-1533 shows the issues of law for the 1992 correction request were over shadowed by AFBCMR affirming on the civil record: Major Whigham's omission does not affirm a chronic condition that may have lead to the late Mr. Edwards primary cause of death.

BACKGROUND FOR THE CORRECTION REQUEST: Ms. Edwards' request for correction of the military record began with the Veterans Administration reviewing the late Mr. Edwards military record as a matter of law in 1988 through 1994 based Ms. Edwards request for survivor benefits for primary cause of death. 1990, Ms Edwards requested copies of the late Mr. Edwards 1986 and 1988 x-ray film. 16 April 1990, Ms. Edwards discovered Major Whigham omitted a finding for nodular densities/nipple shadows in Malcolm Grows medical report for the late Mr. Edwards. 1989 and 1990 Ms. Edwards had Malcolm Grows medical records reviewed. Facts for the uncorrected medical record: Doctor's reviewing Malcolm Grows records consistently state: nodular densities were found in 1979 through 1981 believed to be nipple shadows; however Malcolm Grows 1986 record is void for the finding and evaluation of nipple shadows in 1986.

October 28, 1992 by application of law, Ms. Edwards requested the military record's correction. However, the issues based on law for correction from 1992 through this present date, affirm AFBCMR is refusing to correct the 1986 omission even though AFBCMR admit on the 1997 civil record before Judge Chasanow, Major Whigham chose to omit radiographic data that was under request for correction in 1992. With the issue of law being: AFBCMR denied correction in 1994. Ms. Edwards filed suit in the United States District Court of Maryland in 1995. Judge Chasanow remanded the case to AFBCMR in 1996. AFBCMR reviewed the remanded case in 1997, showing correction is being denial upon review of the remanded civil complaint. Judge Chasanow in 1998 Grant Summary Judgment to the United States for the remanded issues. 1999, Judge Chasanow bars Ms. Edwards' civil complaint under the doctrine of res judicata in DKC-98-4190 for all future actions resulting from AFBCMR's unlawful correction denial of Major Whigham 1986 omission.

To affirm errors in DKC-97-1533 under Federal Law for the correction denial, Ms. Edwards' is submitting the following quote found in AFBCMR's MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS... page 3:

"Although Ms. Edwards application for correction was denied on timeliness, the Board also reviewed the merits of her case. This quote affirms the governing statutes permits the Board to waive timeliness... in the interest of justice." Facts before the United States District Court of Maryland in DKC-95-3115 and DKC-97-1533, Ms. Edwards' complaint did not require a waiver for correction. To include, Ms. Edwards' civil complaint affirms Judge Chasanow did not uphold Judge Ellis ruling in McFarlane v. Secretary of the Air Force, as Mr. Edwards 1986 radiology record remains uncorrected, showing Ms. Edwards is being denied all claims for relief. The Addendum To Record of Proceedings affirm AFBCMR state, Judge Chasanow ruled it was error for AFBCMR to import a reasonableness standard. However DKC-95-3115, DKC-97-1533 and DKC-98-4190 affirm Judge Chasanow rulings were in favor of AFBCMR regardless of error under Federal Law for Ms. Edwards' civil claim.

Ms. Edwards is sending this notice to inform all that she shall ' bring suit for the newly discovered facts in the enclosed letter from AFLSA/JACL for all errors of law that shows AFBCMR unjustifiably denied correction of Major Whigham's 1986 omission.

United States District Court of Maryland ORDER and Memorandum Opinion issued 22 September 1998: Affirm Summary Judgment was granted to AFBCMR for all issues under Federal Law based on the United States malicious assertions in the Addendum To Record of Proceedings and Memorandum of Law In Support of Motion to Dismiss. Showing the facts used to affirm Summary Judgment under Federal Law unjustifiably denied Ms. Edwards' merit based on the complaint for the record correction. Thereby affirms Ms. Edwards' was denied merit as a matter of law March 31, 1997 based on the BOARD using:

Major Whigham's 1986 uncorrected radiology report to assert: The evidence before us, affirms no basis to conclude that a chronic condition existed prior to MSG Edwards' retirement from the Air Force in 1982... (See Memorandum of Law In Support Of Motion To Dismiss, page 4, quote) issues of law: Ms. Edwards state the aforementioned quote and the following quote by AFBCMR 31 March 1997 was released to arbitrarily deny correction by asserting:

1. "We do not find it unusual that Malcolm Grow Medical Center did not note the presence of nodular densities/nipple shadows on the PA view of the 1986 x-ray film taken on the same date from the lateral view did not reveal the nodular densities/nipple shadows (See Addendum To Record Of Proceeding, page 3 beginning with **To the contrary...** ;

AND

2. Based on the evidence before us, we find no basis to

conclude that a chronic condition existed prior to MSG Edwards' retirement from the Air Force in 1982... See Memorandum Of Law In Support Of Motion To Dismiss... Page 4, **Beginning** with: **Based on evidence before us...**

AFLSA/JACL letter shall be submitted to the United States District Court of Maryland, as a matter of law, to confirm Ms. Edwards is being unjustifiably denied correction of Major Whigham's 1986 omission based on the assumptions given to the Court in AFBCMR'S Addendum To Record Of Proceedings. The civil record for DKC-97-1533 affirms AFBCMR states in its MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS, page 7, 2: **The A.FBCMR's Decision Not to Correct MSG Edwards' Medical Records was not Arbitrary and Capricious.** However, the enclosed letter from AFLSA/JACL affirm AFBCMR capriciously state before the United States Court of Federal Claims in 1998, docket 98-930C at Exhibit 17; and to the United States District Court of Maryland docket DKC-97-1533 for remanded claim in Addendum To Record of Proceedings: **"The Board reviewed the remanded record. With the unjustifiable issue being: The Board used (Major Whigham's 1986 omission) to capriciously affirm under Federal Law AFBCMR's Decision not to correct the military record is neither arbitrary or capricious. To include finding the uncorrected issue does not violate Ms. Edwards rights for the correction request or the deceased rights upon discovering Major Whigham chose to omit a comment about nodular densities, see DKC-97-1533 pages 7-8. AFLSA/JACL's letter affirms: AFBCMR wouldn't know a lateral x-ray was taken unless they had the film when they reviewed the case in 1996 based on Judge Chasanow Court ORDER in DKC-95-3115.** Facts for the remanded civil complaint based on the newly discovered facts are: After talking to the examiner who worked the case for the United States, Ms. Edwards' discovers AFBCMR's capricious conclusions were based on the uncorrected 1986 radiology report. With facts as a matter of law affirming Ms. Edwards contested Major Whigham's omission in 1992 by application of law and through Court Proceedings in 1995 before Judge Chasanow. Page 2 of the letter from AFLSA/JACL affirms MSG Edwards' x-ray film for 1986 fell under Rule 10, showing they were destroyed in accordance with the standard disposition schedule. This letter affirms MSG Edwards 1986 and 1988 radiology film was destroyed in January 1994. This fact shows, the late Mr. Edwards radiology film were destroyed three years before Judge Chasanow remanded the case for further proceeding. AFLSA/JACL also affirm no court documents were released to affirm the destruction of the 1986 radiology film.

The enclosed letter dated 3 August 1993 from Ms. Edwards through SAF/MIBR was sent to request a review of the actual 1986 and 1988 x-ray film. Showing this request also included SAF keeping the 1986 and 1988 film longer than the standard disposition schedule for resolution of facts used in DKC-97-1533 to affirm Major Whigham did not error when he chose to omit radiographic data not apart of the late Mr. Edward' medical records. AFBCMR's MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS, page 6 (b) states: **Summary Judgment is Appropriate Because There Are No Material Facts in Dispute.** Facts under Federal Law based on United States granting Summary Judgment to AFBCMR, 22 September 1998 is as follows: Ms. Edwards discovered 24 February 1999 that AFBCMR capriciously used Major Whigham's 1986 radiology report for the contested issued. Court records and the application for correction affirm Ms. Edwards' discovered Major Whigham's omission 16 April 1990. Court records affirm AFBCMR refused in the Addendum To Record Of Proceedings in 1997, to correct Major Whigham's 1986 omission in accordance with Federal Law and/or based on Judge Ellis ruling in McFarlane v. Secretary of the Air Force. Therefore, Ms. Edwards is submitting the letter from AFLSA/JACL to affirm AFBCMR elected to use Major Whigham uncorrected (contested) radiology data to affirm Summary Judgment is Appropriate Because There Are No Material Facts In Dispute.

Ms. Edwards is also enclosing United States District

Court of Maryland Court ORDER issued 29 January 1999, Dismissing and barring civil action for the correction of MSG Edwards' 1986 radiology record under the doctrine of res judicata. Facts as a matter of law for United States District Court barring court action under res judicata, Ms. Edwards affirm 24 February 1999 one-month following this ORDER; she discovered AFBCMR arbitrarily and capriciously used Major Whigham's 1986 radiology record with the contested omissions to affirm, as a matter of law, Summary Judgment is Appropriate.

Ms. Edwards shall DEMAND relief in the amount of 4.5M for damages based on United States capricious actions for the remanded record. This request for relief is for: The anguish, hardship, and mental stress the United States placed on her from 1986 through the present based on facts for the omission and AFBCMR refusal to correct the omission that is still apart of the late Mr. Edwards medical records upon discovering in 1997, Major Whigham chose to omit radiographic data Ms. Edwards' based on Court records requested be corrected in 1992 and again in 1995. Please note: This claim is also for damages as a matter of law based on AFBCMR's knowledge of the omission upon receiving the application for correction in 1992, to include United States District Court's ORDER in 1996 Remanding the civil record for correction to discover the Board used the contested 1986 record from Major Whigham t o affirm Summary Judgment is Appropriate. This suit also includes damages based on having the uncorrected medical records reviewed in 1989 and 1990 with the omissions, leading to the belief there were no nodular densities for the 1986 record based on Major Whigham choosing to omit or not comment on nodular densities in 1986. Ms. Edwards had Malcolm Grows medical records reviewed by various independent doctors who did not know in 1989 and 1990 Major Whigham chose to omit radiographic data that to is still not apart of the medical record, based on the Board's assertions for the contested data.

Encls Sincerely,
as

/s/ ____________________
Myra R. Edwards

Cc:
Honorable Paul Sarbanes
United States Senator
Tower 1, Suite 1010
100 S. Charles Street
Baltimore, Maryland 21201-2700

Lynne A. Battaglia
United States Attorney
ATTN: Larry Adams
Assistant States Attorney
6625 United States Courthouse 101 W. Lombard Street
Baltimore, MD 21201

Honorable Janet Reno
Attorney General
Department of Justice
10th and Constitution Avenues, NW
Washington, DC 20530

I, Myra R. Edwards affirm the following documents are attached with this certified notice sent for right to sue:

1. AFBCMR letter to the Honorable Paul Sarbanes for the correction denial dated, 14 October 1994

2. AFBCMR's letter to Ms. Edwards denying correction dated, 11 October 1994

3. AFBCMR's RECORD OF PROCEEDINGS AIR FORCE BOARD FOR CORRECTION OF MILITARY issued 11 October 1994

4. AFBCMR's letter to Ms. Edwards denying reconsideration, dated 22 November 1994

S. United States District Court of Maryland's ORDER and Memorandum Opinion issued, 11 October 1996 for civil complaint DKC-95-3115

6. United States District Court of Maryland's ORDER and Memorandum Opinion issued, 22 September 1998 for civil complaint DKC-97-1533

7. AFBCMR's Addendum To Record Of Proceedings issued 31 March 1997.

8. AFBCMR's MOTION TO DISMISS AND MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS issued October 1997

9. United States District Court of Maryland's ORDER and Memorandum Opinion issued, 29 January 1999 for civil complaint DKC-98-4190

10. AFLSA/JACL letter as Memorandum to Ms. Palko dated, 24 February 1999.

11. Ms. Edwards letter to SAF/MIBR, dated 3 August 1993

12. Application for Correction of Military Record, dated 28 October 1992

Signed by:

/s/ ______________________

Myra R. Edwards
Date 15 September 1999
Daytime # 703-806-3425

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Myra R. Edwards
Plaintiff,
v.
No. 98-930C
Judge John P. Wiese

THE UNITED STATES OF AMERICA
Defendant.

CLAIM UNDER TITLE 10 ARMED FORCES SUBTITLE A MILITARY LAW, SECTION 1552 (4) (B) AND STATUTE OF LIMITATION LAW GOVERNING CORRECTION **DIP** USAF MEDICAL CENTER'S 1986 RADIOLOGY RECORD DENIAL 11 OCT 1994

I. **Complaint.**

Myra R. Edwards, pro se representative is before this court under United States Code Annotated, Title 28 Section 1346, 242 subsec. (a)(2) to request concurrent jurisdiction with the U.S. District Court For The District Of Maryland for federal violations by the United States who denied correction of Major Whigham's omission of medical facts as untimely 11 October 1994. As a matter of law, facts based on the United States Memorandum of Law In Support of Motion To Dismiss... dated 22 October 1997 shows: Major Whigham in 1986 chose not to comment on nodular densities/nipple shadows for Malcolm Grows post service treatment records that Ms. Edwards, October 28, 1992, asked Department of the Air Force, Air Force Board Correction of Military Records (AFBCMR) under the Provisions of Title 10 U.S.C., Section 1552 to correct based on the Department of Veterans Affairs denial for service benefits issued 18 June 1991.

Department of Veterans Affairs from 1991-1994 denied service connected entitlements based on medical facts under review using Malcolm Grows treatment records for Major Whigham's 1986 omission. See denial by the Veterans

Administration, issued June 18, 1991 and 6/15/94 which shows even though requested under the provisions of law, the United States refused to correct Major Whigham omission of radiographic facts, based on Doctor Freedman's 1990 radiology finding, given to Ms. Edwards 16 April 1990.

See enclosed letter to HQ AFMPC/DOA1, dated 6 March 1990, shows Ms. Edwards state, in the second paragraph that she is awaiting answers from various government agencies... and that the information she is questioning dates back to her late husband's medical records for the years 1978-1981 and was not discovered by her until after her husband's death. Ms. Edwards discovered medical facts after the death of her husband upon receiving Doctor Ruxer's 27 Septembef-1989 medical facts for Malcolm Grows 1978-1981 radiology records.

Ms. Edwards letter to the United States, dated 6 March 1990, under law shows: Ms. Edwards was asking the United States questions concerning the Statute Of Limitations Law that governs the answers she was waiting to receive from government agencies, based on what was known at the time, after receiving Doctor Ruxer's 27 September 1989 medical finding.

After receiving Doctor Freedman's 1990 radiology finding for duplicate copies of Malcolm Grows 1986 radiology film, under the provisions of Title 10, Section 1552, Ms. Edwards by application requested correction of Major Whigham's 1986 medical omission by giving Doctor Freedman's medical finding to Department of Air Force, 28 October 1992. Prior to giving Doctor Freedman's radiology finding to the Department of Air Force, Ms. Edwards gave Doctor Freedman's medical finding to the Department of Veterans Affairs (VA), I May 1990. See Doctor Freedman's 16 April 1990 radiology finding for duplicate copies of Malcolm Grows 1986 radiology film and the enclosed letter dated 1 May 1990 sent to the VA for facts in omission based on Doctor Freedman's 1990 medical finding.

After sending the enclosed letter dated 1 May 1990 to the VA, in support of facts for Major Whigham's omission, the VA denied service entitlements, without including Doctor Freedman's medical finding in the June 18, 1991 denial decision. As a matter of law, Ms. Edwards appealed the VA's denial decision and under the provision of Title 10, Section 1552 requested correction of facts in omission for Malcolm Grows post treatment medical records.

AFBCMR denied the request under law to correct Malcolm Grows post treatment records as untimely, 11 October 1994. See enclosed Department of the Air Force correction denial sent to the Honorable Paul Sarbanes dated 14 October 1994 and to Ms. Edwards dated 11 October 1994.

This complaint is for federal violations under statute, and for the denial of benefits using Malcolm Grows post treatment medical records from 1986-1994 with medical facts in omission for the finding and evaluation of nodular densities in the year of occurrence (1986).

After receiving the Department of Air Force denial for correction of Major Whigham's omission, Ms. Edwards requested reconsideration; however Department of Air Force denied the reconsideration request 22 November 1994 based on the asserted date of discovery, 16 April 1990. The Department of Air Force letter dated 22 November 1994 states; you asserted a date of discovery of April 16, 1990, which would, if correct make the application timely. Ms. Edwards sent several requests to AFBCMR for a copy of records in support of the date; the sovereignty claimed Ms. Edwards discovered Major Whigham's omission. Facts under law are: November 22, 1994, Department of the Air Force refused to correct Major Whigham's omission based on the date Ms. Edwards affirm to have discovered the omission; and under law, the Department of Air Force refused to release records in support of the date, Ms. Edwards should or could have discovered Major Whigham's omission. As a matter of law, Ms. Edwards filed claim before the United States District Court of Maryland for the release of records under the Freedom Of Information Act (FOIA) based on AFBCMR's asserted date, for discovering Major Whigham's omission. The U.S. District Court of Maryland in' the enclosed ORDER and Memorandum Opinion on page 9 and 10 states: "Apparently, what Plaintiff (Ms. Edwards) is seeking is a document showing that someone told Plaintiff that her husband's medical records were allegedly in error more than three years before she filed her request for a records correction."..."The important point, as far as AFBCMR was concerned, was not when Plaintiff actually became aware of the relevant facts, but rather when Plaintiff reasonably could have discovered the relevant facts.

As a matter of law, request the honorable court decide whether or not, the United States erred under statute, 11 October 1994, 22 November 1994 and 31 March 1997 based on the request to correct Major Whigham's 1986 medical omission. Request the Honorable Court decide whether or not, the United States created factual and legal error based on admissions in the Memorandum Of Law In Support Of Motion To Dismiss, dated 22 October 1997.

The Memorandum of Law... shows the United States on page 7, last paragraph states: "The fact that this doctor chose not to include a comment about nipple shadows does not make this record in error or inaccurate." By law, Major Whigham's omission shows Malcolm Grows post treatment medical records are in error; to include errors for medical reviews using Malcolm Grows uncorrected medical facts. As a matter of law, prior to the United States acknowledging Major Whigham chose to omit or not comment on radiographic findings in 1986, under statute Ms. Edwards asked the United States to correct major Whigham's omission.

Ms. Edwards' complaint before this court is not for a decision on whether or not, the omission would change the outcome of the Veterans Administration denial; or to prove the accuracy or inaccuracy of facts based on the omission. **Ms. Edwards is before this court for a decision on whether or not the United States unjustifiably denied correction of Major Whigham's 1986 omission, to include errors under statute for the correction denial.**

Ms. Edwards is before the court for a decision on whether or not the United States violated federal statutes, and regulations to unjustifiably deny correction of Major Whigham's omissions of medical facts under rev-7lew from 1986-1994.

Facts before this court are: The U.S. District Court of Maryland remanded the case for correction back to AFBCMR 11 October 1996. After the U.S. District Court remanded the case for correction back to AFBCMR, the United States refused correction by stating 31 March 1997: After careful consideration of your application for Correction the Board determined there was insufficient evidence of error or in3ustice to warrant corrective action. Accordingly, the Board denied your application.

The request for correction dated 28 October 1992, shows in block #10 the United States knew the Department of Veterans Affairs for COVA case number 91-1685, VA No, was reviewing the record for correction. XSS 513-30-5804. Also the application for correction shows Ms. Edwards states on page 4, QUESTION #8, paragraph 3: I requested a review of Hartwell E. Edwards 1978-1986 military records from Doctor Ruxer and Doctor Schoenberger, who reported a finding that is based on information, as written in Malcolm Grows medical records. This includes, Malcolm Grows 1986 chest x-ray report for Major Whigham, without knowing under law Major Whigham chose to omit a radiographic finding for nodular densities/nipple shadows; thereby creating factual error based on the request for correction to show a medical relationship based on past findings of possible nodular densities/nipple shadows, as they relate to the 1987/1988 discovery of lung cancer. See Doctor Ruxer, 27 September 1989 medical opinion based on past findings of nipple shadows based on Malcolm Grows uncorrected medical facts for Major Whigham's medical omission.

The request for correction also shows, Ms. Edwards sent the following letters to Secretary of the Air Force, SAF/MIBR dated 16 February 1993 and 3 August 1993, to include the enclosed letter to AFBCMR dated 20 July 1994. Ms. Edwards affirm prior to receiving the 11 October 1994 correction denial, she wrote SAF/MIBR 16 February 1993, and on page 2 she states: In accordance with the application for correction of military records under the Provision of Title 10 U.S.C., Section 1552, request the United States review Malcolm Grows military records for omissions under law based on Doctor Freedman's 16 April 1990 radiographic finding which shows Malcolm Grow omitted medical facts for nodular densities and nipple shadows in 1986 when the late Mr. Edwards came to Malcolm Grow for the acute appointment. See chronological record of medical care from Malcolm Grow dated 10 February 1986 and Major Whigham's 1986 radiology report for omission of medical facts not included in the medical record based on the request for correction. Also review, Doctor Freedman's radiographic finding given to Ms. Edwards 16 April 1990, for medical facts before this court based on the request for correction.

3 August 1993, Ms. Edwards sent the attached letter to SAF/MIBR for notification on the location of Malcolm Grows uncorrected medical records, for knowledge under

law of records under request for correction. Finally, 20 July 1994, Ms. Edwards sent notice to Executive Director AFBCMR to request correction of Major Whigham's omission. Thereby showing correction was denied 11 October 1994 with the United States claiming: The application for correction was not timely filed. See enclosed notices to deny correction sent to the Honorable Sarbanes dated 14 October 1994 and to Ms. Edwards dated 11 October 1994.

II. Facts As A Matter Of Law For The Medical Correction Denial is as follows:

1. Ms. Edwards filed the request to correct Malcolm Grows 1986 chest radiology report by application through AFBCMR, 28, October 1992, two years and five months after receiving Doctor Freedman's 16 April 1990 radiology report for radiographic findings not commented on by Major Whigham in 1986.

2. Ms. Edwards affirm she received Doctor Freedman's 16 April 1990 radiology finding for knowledge of Malcolm Grows medical omission. Ms. Edwards affirm she did not know Major Whigham chose not to comment on nodular densities and nipple shadows until October 22, 1997, based on facts in admission by the United States who denied correction of the omission based on Doctor Freedman's radiographic finding 11 October 1994.

3. The VA omitted or failed to include Doctor Freedman's medical finding in the June 18, 1991 denial decision for entitlements. Thus, Ms. Edwards appealed the VA denial decision based on Malcolm Grows post service treatment records and asked the Department of Air Force to correct Major Whigham's 1986 medical omissions, see United States Memorandum of Law... showing Major Whigham chose not to comment on radiographic medical findings in 1986.

4. See enclosed letter dated 1 May 1990 for notification to the VA that Georgetown University Hospital's radiologist reviewed duplicate copies of Malcolm Grows 1986 chest radiology film. And that, Doctor Freedman, radiologist at Georgetown University Hospital, sent notice, 16 April 1990 that Malcolm Grows 1986 chest radiology film shows: "Bi-apical plural thickening and two l cm nodular densities projected over both lungs for major Whigham's 1986 omission of medical facts not apart of Malcolm Grows post treatment records.

5. The enclosed Memorandum Decision Before Judge Farley, dated October 22, 1992 shows, this court states on page 2: "Upon consideration of the **record,** appellant's brief, and the Secretary's motion for summary affirmance; the. Court holds that appellant has not demonstrated that the Board committed either factual or legal error, which would warrant reversal. February 10, 1993 the U.S. Court of Appeals for the Federal Circuit, granted the Secretary of Veterans Affairs ORDER to waive the requirements of Federal Circuit Rule 27 (d); thus granting, the secretary's motion to dismiss the case for entitlements; without knowledge of the following judicial facts: (1) The United States unlawfully refused correction of Major Whigham's omission as untimely, (2) Major Whigham in 1986 chose not to comment on nodular densities/nipple shadows that were required by law to be apart of Malcolm Grows medical records for facts in the entirety based on the United States 22 October 1997 admission showing Major Whigham chose not to comment on nodular densities and nipple shadows in 1986. Ms. Edwards affirm she discovered Major Whigham omission based on Malcolm Grows post service medical records 16 April 1990 and that she requested correction of the omission 28 October 1992 without knowing the facts for the omission are: Major chose not to comment on radiographic findings.

6. Ms. Edwards' affirm after sending notice of the omission to the VA, 1 May 1990, and requesting correction, the United States never stated: Major Whigham chose not to comment/omit medical facts until 22 October 1997. Please review Defendant's Memorandum Of Law In Su port Of Motion To Dismiss Plaintiff's Complaint Or For Summary Judgment. The claim of the United States in the Memorandum of Law To Dismiss... is, Major Whigham wrote the 1986 chest radiology report differently from other medical professional who reported radiographic findings; thereby showing the United States-is-sanctioning the omission without lawfully correcting the omission.

7. Ms. Edwards request judgment on whether or not the United States, by law was required to tell the VA that Major Whigham chose not to comment on nodular densities/nipple shadows, prior to Ms. Edwards discovering the omission and requesting correction of the medical omission. See enclosed "Statement of the Case", Summary of Evidence and Adjudicative Actions Taken before the VA, dated 31 October 1988 for post service treatment records.

8. The post service treatment records to the VA from Malcolm Grow shows, the United States did not state or tell the VA, Major Whigham chose not to comment on nodular densities/nipple shadows in 1986. However, the United States did tell the VA and the U.S. District Court of Maryland, that the sovereignty found no basis to conclude that a chronic condition existed prior to (MSgt Edwards) retirement from the Air Force in 1982. Therefore, we are not persuaded that the applicant's husband was unfit at the time of his retirement and do not believe that he should have been retired by reason of physical disability. See Memorandum Of Law In Support Of Motion To Dismiss... page 4, (Exhibit 2).

In accordance to federal law, entitlements for service-connection are based on whether or not a chronic condition existed prior to retirement. Which includes, primary causes of death, such as Large Cell Carcinoma that by its nature overwhelmingly causes death. Entitlements can also be established under law, if there is evidence that the veteran's fatal illness incurred in service or was aggravated by service as either the primary cause of death or contributed substantially and materially to the production of death. As a matter of law, Ms. Edwards finds the United States prohibited correction of Major Whigham's medical omission for Malcolm Grows post service treatment records, by unlawfully denying correction while knowing Doctor Ruxer and Doctor Schoenberger based their medical opinions on Malcolm Grows uncorrected medical facts. See enclosed Correction Application, dated 28 October 1992 page 4, paragraph 3, beginning with "I requested a review of Hartwell E. Edwards, 1978-1986 military medical records from Doctors Ruxer and Schoenberger...

Error: The United States denied correction as untimely 11 October 1994; and the United States affirmed before the U.S. District Court of Maryland in the Addendum To Record Of Proceedings Air Force Board For Correction Of Military Records dated March 31, 1997, stating, there is insufficient relevant evidence presented to demonstrate the existence of probable error or injustices while admitting in the Memorandum of Law In Support Of Motion To Dismiss Plaintiff's Complaint... dated 22 October 1997 that Major Whigham chose not to comment on medical facts that under law are still not apart of Malcolm Grows medical records.

Ms. Edwards ask the Honorable court to find the United States unlawfully denied correction of Major Whigham's omission, 11 October 1994, 22 November 1994 and 31 March 1997.

Facts for the correction request before this Court are: (1) October 11, 1994 the United States denies correction by stating, the correction request was not filed under statute; thus in the interest of justice the Board cannot excuse your failure to submit the application beyond the three-year limitation for discovering the error or omission. (2) November 22, 1994 the Board states, correction of the military record was denied because you asserted a date of discovery of April 16,1990 which would if correct make the application timely. With facts under law showing the United States never provided any records as required by law for violations under statute to show: Ms. Edwards had knowledge of the essential facts that gave rise to the application for correction for a lawful finding that shows; correction was denied because our records show you had knowledge of Major Whigham's omission before receiving Doctor Freedman's radiographic finding. (3) 31 March 1997, the United States denies correction of Major Whigham omission by stating on page 2, paragraph 1: Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice based on the request for correction. (4) October 22, 1997, the United States in the Memorandum Of Law In Support Of Motion To Dismiss... on page 7, last paragraph states: The fact that this doctor (Major Whigham) chose not to include a comment about nipple shadows does not make the records in error or inaccurate. Facts before this are: Under statute and in accordance with federal laws, Ms. Edwards requested correction of Malcolm Grows 1986 post service records which includes correction for comments not included when finding nipple shadows, and the inclusion of all radiographic findings not reported on the post treatment records for 1986 regardless of whether or not the omission makes the record in error or inaccurate.

Before this court is a copy of the Memorandum opinion by the United States Court For the District of Maryland, issued 11 October 1996. See page 11 for Section 1552(b) that shows the law permits correction of military records if an application is made within three years after the applicant discovers the error or injustice... This complaint is for errors under statute based on the United States denying correction of Major Whigham's omission that denied justice based on review of medical facts in the entirety (without omissions). See certified notice to AFBCMR dated 20 July 1994 requesting correction before receiving the correction denial dated 11 October 1994.

Ms. Edwards is requesting judgment under law for monetary relief based on the United States refusal to correct Major Whigham's medical omissions in accordance to statute. Monetary relief based on the omission of medical facts not apart of Malcolm Grows medical records for review by independent doctors in 1989 and 1990. And for the United States denying correction while knowing Major Whigham under law breached his duty as a medical professional by not reporting and choosing to omit radiographic findings for Malcolm Grows post service treatment records.

III. Statement of Facts and Course of Proceedings for Admissions-That major Whigham omitted Radiographic Findings for Malcolm Grows 1986 Radiology Record.

The enclosed Respondent-Appellees Motion To Dismiss And Motion To Waive Requirements of Federal Circuit Rule 27(d), dated January 19, 1993 is enclosed with Appendix from Stuart M. Gerson, Assistant Attorney

General. The enclosed Respondent-Appellees Motion To Dismiss on page 3, Under Section II. Statement Of Facts and Course of Proceedings Below states... Ms. Edwards appealed the decision of the BVA and, on June 18, 1991 the BVA denied service connection for the cause of the veteran's death. The Board of Veterans Appeal (BVA) states: ... Addressing, Ms. Edwards' contention that her husband had lung cancer for some time prior to diagnosis of the cancer in 1987, the BVA reviewed the reports of **two physicians, one from Malcolm Grow (Doctor Ruxer) United States Air Force Medical Center and one private specialist (Doctor Schoenberger) in pulmonary medicine, both of whom concluded that there was no radiographic evidence of lung cancer prior to 1987.**

Request this court review the findings of these two doctors and consider under federal law, the United States never acknowledged Major Whigham chose not to comment on medical facts in review by the BVA January 19, 1993. Or as a matter of law, the United States never corrected Major Whigham's omission for facts based on Ms. Edwards June 18, 1991 BVA denial. Also enclosed is a copy of the Department of Veterans Affairs Rating Decision, see rating date in line 4. Issued 06/15/94 and Evidence for: Reports of treatment based on Malcolm Grows uncorrected medical records. Also see Doctor Ruxer's 27 September 1989 medical finding, Doctor Schoenberger's 5 December 1990 medical finding and Department of Veterans Affairs "Statement of the Case, "Summary of Evidence and Adjudicative Actions Taken for medical facts submitted for Malcolm Grows treatment records.

The United States in the enclosed Memorandum Of Law In Support Of Motion To Dismiss Plaintiff's Complaint... on page 7, last paragraph, states: "The fact that this doctor (Major Whigham) **Chose not to include a comment about nipple shadows does not make this record** (1986 radiology report from Malcolm Grow USAF Medical Center) in error or inaccurate". The fact that doctors write x-ray reports differently does not make them in error or create an injustice from which a Plaintiff is entitled to relief.

By law, Major Whigham professionally breached his duty as a medical professional by choosing to omit radiographic findings for nodular densities and nipple shadows in the year of occurrence (1986) As a matter of law request this Court find Major Whigham's omission creates both factual and legal error based on the request for correction of post service treatment records under the Provisions of Title 10, Section 1552. Also request this court find the United States unlawfully denied correction of Major Whigham's omission with facts under law for Major Whigham choosing to breach his duty as a medical professional by not reporting in the year of occurrence radiographic medical facts.

Doctor Ruxer's enclosed 27 September 1989 medical opinion shows he states: On page 2... "I have difficulty connecting those findings described in 1978 and 1981 (meaning nodular densities found by other radiologist 'at Malcolm Grow in the year of occurrence) with later abnormalities on the chest x-ray noted in late 1987 and early 1988. Under law request Review of Statement of the Case from the Veterans Administration, under Pertinent Laws; Regulations; Rating Schedule Provisions for errors based on the request for correction when attempting to **establish service connection for a veteran's fatal illness or injury (1988-1993), under law by providing evidence that a disability incurred in or aggravated by service was either the primary cause of death or contributed substantially and materially to the production of death. (38 USC 410; 38 CPR 3.312).** Doctor Ruxer's medical finding based on review of Major Whigham's interval radiology report with the omission shows: Doctor Ruxer states, he has difficulty connecting reports of reported nodular densities with the 1986 omitted finding of nodular densities/nipple shadows with later findings of nodular densities in 1987 and 1988.

Doctor Schoenberger's medical report, dated December 5, 1990, shows his finding parallels Malcolm Grow medical findings for post treatment records. See enclosed Statement of the Case In the Appeal of Hartwell E. Edwards. See page 02, of the "Summary of Evidence and adjudicative actions taken: For October 31, 1988... Showing, post service treatment records were submitted from Malcolm Grow Medical Center indicating that the veteran was treated for chronic cough due to bronchitis on March 11, 1985. In October 1986, he was evaluated for a moptysis. On October 11, 1987, the veteran was evaluated for right lower left lobe mass diagnosed as large cell carcinoma.

Doctor Schoenberger's medical report for the 1986 military record states: He continued to be followed in the military health system after retirement, and had several additional visits for cough and bronchitis, including one episode of hemoptysis (coughing up blood) in February 1986. Then in late 1987, he began again to cough up blood, and this time his chest x-ray showed a shadow in the right lower lobe suspicious for cancer. Doctor Schoenberger's medical report, as a matter of law, does not state: He evaluated nodular densities/nipple shadows for the post service treatment records in 1986. Also, as a matter of law, Doctor Schoenberger's medical opinion does not show he states: Nodular densities/nipple shadows, even though omitted in 1986, were included in his review of the post treatment medical records, for a finding under law, to show, Major Whigham did not error based on the omission of medical facts not corrected, by Ms. Edwards lawful request.

On page 5 of Respondent-Appellees Motion To Dismiss dated January 19, 1993... the CVA affirmed the BVA's decision against reopening Mr. Livingston's claim, and stated "the [BVA] did not err in concluding that no new and material evidence was present." Facts before this court are, the defendants/United States never acknowledged Major Whigham chose not to comment on nipple shadows before 1987. So the question of error in January 1993 based the United States refusing to correct Major Whigham omission could not be determined by the BVA who concluded no new and material evidence was present. Request this court take into account, the United States by law should have corrected Major Whigham's omission based on the request for correction and. thus avoid the legal burden placed on Ms. Edwards to challenge the validity of the correction request that was filed in accordance to statue for knowledge of Major Whigham's 1986 omission. See enclosed letter from the United States dated 14 March 1990 which states: The statute of limitation for requesting a correction of military records is three-years.

Request this court review Respondent-Appellees Motion To Dismiss and Motion To Waive Requirements Of Federal Circuit Rule 27(d) dated January 19, 1993 which shows BVA states on page 5, paragraph 2: ... Livingston's case rests solely on the alleged misinterpretation of the legal effect of the board's decision... In the absence of a challenge to the validity of a statue or a regulation, or the interpretation of a constitutional or statutory provision or a regulation, we (meaning the U.S. Court of Appeals For The Federal Circuit have no authority to consider the appeal. Ms. Edwards state her claim before this court is against Malcolm Grow, USAF Medical Center and AFBCMR for violations under federal laws, which shows the United States, misinterpreted statutory provisions for correction of Major Whigham's omission for Malcolm Grows 1986 post service treatment records.

This complaint is for concurrent jurisdiction based on federal and constitutional laws, used unjustifiably by the United States to deny correction of Major Whigham, USAF, at Malcolm Grow Medical Center's, 1986 radiology record. Request judgment for federal violations of medical facts in omission before the BVA and the CVA based on the request for correction. Request judgment of the omission in accordance to laws that govern a professional, employed by the United States who breach his duty by not commenting on radiographic findings in 1986 when the late Mr. Edwards went to Malcolm Grow for the acute appointment (10 February 1986) Request judgment on Malcolm Grow USAF

Medical Center being required, to release a copy of the late Mr. Edwards 1986 frontal and lateral projection chest x-ray film in accordance with the enclosed FOIA request dated 28, September 1998. The United States denied correction of Major Whigham's 1986 radiology report, 11 October 1994 with facts under law showing correction continues to be denied, see enclosed letter from the United States dated 31 March 1997.

IV. Doctor Freedman's 1990 Radiographic Report and Additional Facts For Correction.

Doctor Freedman sent Ms. Edwards a copy of the 16 April 1990 radiology report after reading duplicate copies of Malcolm Grows 1986 ~~and 1988 ra~~diology film.

The Department of the Air Force sent written notification that they received the application for correction 9 Nov 1992. See enclosed notice to Ms. Edwards dated 12-April 1993. Facts for correction as shown on the notice dated 20 October 1993, are as follows: Department of Air Force is awaiting completion of a staff advisory opinion from the appropriate Air Staff Office of Primary Responsibility (OPR).

The enclosed letter dated, October 14, 1994 shows Department of the Air Force sent notice to the Honorable

Paul Sarbanes that the application for correction was denied. The enclosed letter to Ms. Edwards from the Department of the Air Force, dated 11 October 1994 states: After careful consideration of the application for correction, the Board states the application was not timely filed. Thus, the United States denied correction, 11 October 1994 while knowing (see enclosed October 1997 Memorandum Of Law-In Support Of Motion To Dismiss Plaintiff Is Complaint Or For Summary Judgment, on page 7, last paragraph) Major Whigham chose to omit a comment on medical facts under request for correction.

Prior to receiving Doctor Freedman's medical finding for duplicate copies of Malcolm Grows 1986 and 1988 radiology film. The enclosed -letter, shows, Ms. Edwards wrote Department of Air Force, Headquarters Air Force Military Personnel Center on 6 March 1990 to request procedures for correction of military records. The enclosed letter from the United States, dated 14 Mar 1990, states: AFBCMR considers applicable requests and submits appropriate recommendations to the Secretary of the Air Force whenever, in the boards judgment, and error or injustice exists.

The United States in the enclosed Memorandum Of Law In Support Of Motion To Dismiss Plaintiff Is Complaint Or For Summary Judgment before the U.S. District Court of Maryland, dated October 1997 states, on page 2, paragraph 4: Attempting to establish a service connection with a claim to the Veterans' Administration ("VA") for death benefits, Ms. Edwards had three different doctors review her husband's medical records. All opined that the projections on the earlier x-rays were nipple shadows.

On page 8, of the Motion To Dismiss, the United States, said, the fact that doctors write x-ray reports differently does not make them in error or create an injustice from which a Plaintiff is entitled to relief.

This complaint is not for whether or not, Major Whigham wrote his 1986 radiology report differently. This complaint is for **unlawfully denying correction of Major Whigham's omission.** And for, **omitting medical facts under review by independent doctors and the BVA that denied justice, based on the request for correction, to show in accordance to law, major Whigham**

chose to not comment on radiographic findings in review. And for, relief based on Major Whigham choosing as a medical professional, to omit medical facts that by law were under request for correction.

The United States Court Of Veterans Appeal state in the enclosed Memorandum Decision before Farley, Associate Judge, on page 2, paragraph 1... "A finding is clearly erroneous when although there is evidence to support it, the reviewing Court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Request this court review this complaint for errors under statute and federal violations based on the request for correction under the Provisions of Title 10 USC Section 1552; and for justice on the entirety of the medical records with no exclusion/omission of medical facts based on reviews by independent doctors who gave opinions without knowing Major Whigham in 1986 chose to omit radiographic findings that by law should have been corrected.

The application for correction, dated 28 October 1992, shows: Ms. Edwards in block 10, told the United States the medical facts for Major Whigham's 1986 omission were being reviewed by the United States Court Of Veterans Appeals (COVA case number 91-1685, VA No. XSS 513-30-5804), see enclosed letter from AFBCMR dated 14 March 1990 that states... If the VA is doing a review of your requested benefits, this application may be delayed.

Prior to the United States denial of the records correction, Ms. Edwards sent the Office of the Assistant Secretary the enclosed letters dated 16 February 1993. This letter shows, Ms. Edwards states: Doctor Freedman's radiology report contradicts Malcolm Grows 1986 radiology report without knowing under law Major Whigham chose not to comment on nodular densities that Ms. Edwards asked the United States to correct.

V. Injustice.

By law, the United States created an injustice for the 1986 interval medical record in 1986 when Major Whigham chose to omit radiographic findings. By law, the injustice continued, even after the lawful request for correction of Major Whigham's omission; to include requesting reconsideration for the justice based on the omission. See enclosed letters from AFBCMR dated 22 November 1994 and 31 March 1997 denying correction of Major Whigham's omission for the 1986 post treatment service records.

Ms. Edwards, asked the Secretary of the Air Force in the letter dated 16 February 1993 to resolve the contradiction of medical facts without knowing the issue for correction was/is: Major Whigham chose to omit medical facts, thereby creating an injustice by the United States with no possible resolution based on the United States refusal to correct Major Whigham's omissions.

The enclosed certified letter, dated 20 July 1994 to AFBCMR for correction shows, Ms. Edwards states the request for correction is for evaluation on the longevity of the nipple shadows for a pre-existing condition of the proximate cause of lung cancer that led to death. After sending this letter to AFBCMR on 20 July 1994, the request for correction was denied as untimely on 11 October 1994. See enclosed letter from AFBCMR to Ms. Edwards denying correction as untimely.

VI. Case In The Appeal of Hartwell E. Edwards From The Decision Of The Veterans Administration – "SUMMARY OF EVIDENCE AND ADJUDICATIVE ACTIONS TAKEN".

The enclosed SUMMARY OF EVIDENCE from the VA shows Malcolm Grow did not include medical facts to the

Department of Veterans Affairs, to show, Major Whigham chose to omit, or not comment on nodular densities found by Department of Veterans Affairs, to show, Major Whigham chose to omit, or not comment on nodular densities found by reading the late Mr. Edwards, 1986 radiology chest x-ray film, April 16, 1990.

The VA in the 3rd paragraph on page 2, of the SUMMARY OF EVIDENCE, UNDER PERTINENT LAWS; REGULATIONS AND RATING SCHEDULE PROVISIONS, states: "There are primary causes of death which, by their very nature, are so overwhelming that eventual death can be anticipated..." However, even in such cases it must be considered whether there may be reasonable basis for holding that a service-connected condition was of such severity as to have had a material influence in accelerating death. Facts based on the Summary of Evidence are as follows: (1) major Whigham's omission was never corrected, even though requested by law, for facts in adjudication before the Department of Veterans Affairs from 1986-06/15/94. (2) As a matter of law, the United States knew Doctor Ruxer and Doctor Schoenberger gave medical opinions based on Malcolm Grows uncorrected medical facts, (see application for correction under Question #8) which shows, the claim of the United States before the courts for refusing correction is: Ms. Edwards had three doctors review the medical records and all opinioned that the projections on the earlier x-rays were nipple shadows. (TR 79-80, 81-83, 87). See Memorandum Of Law In Support-Of Motion To--Dismiss, page 2, paragraph 4.

VI. Statement of Facts.

Ms. Myra. R. Edwards is the widow of Hartwell E. Edwards, a former member of the Air Force. In May 1982, MSgt Edwards retired from active duty. October 11, 1994, AFBCMR denied correction of Major Whigham's omission as untimely. November 22, 1994 AFBCMR denied reconsideration based on the asserted date for discovering Major Whigham's omission. March 31, 1997 AFBCMR denied correction of Major Whigham's omission by stating there was insufficient evidence of error or injustice to warrant corrective action. Mr. Edwards died October 11, 1988 from Large Cell Carcinoma of the lung.

Ms. Edwards affirm she tried under FOIA to get the United States to release, documents or records for knowledge based on the United States assertion that denied correction. See enclosed letters from Ms. Edwards dated 11 May 1995 and certified request dated 24 May 1995; see AFBCMR's response dated May 04, 1995, 22 May 1995, March 22, 1995, March 28, 1995 and 14 December 1995.

-The certified letter, dated 4 August 1995 was Official Notification of the civil suit for denial of records in support of knowledge that Ms. Edwards knew Major Whigham chose not to comment on nodular densities/nipple shadow before receiving Doctor Freedman's 16 April 1990 medical finding. Ms. Edwards went before the U.S. District court of Maryland because AFBCMR refused to release records that support under law the correction denial.

The enclosed U.S. District Court of Maryland's ORDER and Memorandum Opinion issued 11 October 1996 states on page 9 and 10: ... "Apparently, what Plaintiff is seeking is a document showing that someone told Plaintiff that her husband's medical records were allegedly in error more than three years before she filed her request for a records correction."..."The U.S. District Court opined: The important point, as far as AFBCMR was concerned, **was not when Plaintiff actually became aware of the relevant facts, but rather when Plaintiff reasonably could have discovered the relevant facts.**[2]

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[2] As will be discussed infra; it may have been an error for AFBCMR to use this test for timeliness. Whether or not this was the correct standard to use, however, has no effect on this court's FOIA analysis.

The enclosed Addendum To Record Of Proceedings Air Force Board For Correction Of Military Records dated March 31, 1997,shows the "BOARD CONCLUDES on page 2, that: Insufficient relevant evidence has been presented to demonstrate the existence of-.probable error or injustice.

By law, the error or injustice for this complaint, is shown in the United States Memorandum of Law In Support Of Motion To Dismiss... which shows, the United States found: Major Whigham chose not to include a comment about nipple shadows that by law under the Provisions of Title 10 USC, Section 1552 were required to be corrected for medical reviews using Malcolm Grows post treatment records.

As a matter of law, a health care professional is not allowed to omit radiographic findings that by statute were under request for correction. By law, health care professionals are required to use the same level of care that any other competent professional would use to report radiographic findings. See Doctor Ruxer's letter dated 27 September 1989 for reports of radiographic findings by other health care professionals at Malcolm Grow from 1978 through 1981 and 1987/1988.

Facts for the Board concludes, in the Addendum To Record of Proceedings... dated 31 March 1997 shows, the United States continued to refuse correction of Major Whigham's omission. And that, the United States as a mater of law requested Summary Judgment 22 October 1997 with facts under law showing Major Whigham chose not to include a comment about nipple shadows while knowing as a matter of law, Ms. Edwards requested correction of Major Whigham's omission 28 October 1994.

VIII. Medical Facts for the 1986 Omission.

1. By law, Malcolm Grows medical records should have been free of omissions for adjudication of entitlements by the BVA and independent doctors from February 10, 1986 through 06/IS/94. See enclosed June 18, 1991 VA decision; Respondent-Appellees Motion To Dismiss... dated January 19, 1993; Statement of the Case for Malcolm Grows record in review by the VA; and VA rating decision given 06/15/94.

2. The doctors who reviewed Malcolm Grows medical records gave opinions without stating under law, they were

aware of the omission for the 1986 issue. See Doctor Ruxer medical finding, dated 27 September 1989 and Doctor Schoenberger's medical finding dated 5 December 1990. Doctor Freedman is a radiologist who reported radiographic findings, as a professional, upon reviewing duplicate copies of Malcolm Grows 1986 radiology film for the late Mr. Hartwell E. Edwards.

3. Facts based on the uncorrected 1986 radiology record shows, Malcolm Grows 1986 radiographic finding was opined as: The interval radiology record that precludes a finding under law for, if it would generally be reasonable to hold that a service-connected condition accelerated death unless such disability affected a vital organ...

4. Doctors Ruxer, and Schoenberger gave medical opinions for Malcolm Grows uncorrected post treatment records, without benefit under law of knowing Major Whigham chose not to include a comment about nipple shadows. Facts under law also shows, Malcolm Grows 1986 radiology record was never corrected to show a finding for: Plural thickening and two lcm nodular densities that may or may not be consistent with nipple shadows based on Doctor Freedman's opinion for the use of nipple markers.

5. The United States admitted in the civil memorandum of

Law dated 22 October 1997 that Major Whigham chose to omit medical facts under review by the Departm-7e'nt of Veterans Affairs. Thereby showing under law, the medical records given to the VA did contradict or omit facts in review by the VA and independent doctors who did not know Major Whigham chose not to include a comment about nipple shadows in the year of occurrence.

See enclosed notice to the VA requesting 'a waiver of the three-year statute of limitation law da5ed I May 1990. The 1 May 1990 letter shows Ms. Edwards states, Doctor Ruxer 27 September 1989 letter opinions "I have difficulty connecting those findings described in 1978 and 1981 with later abnormalities on the chest x-ray noted in late 1987 and early 1988". There is in the clinical record (for Major Whigham) a chest x-ray report dated 10 February 1986, which reads **-Standard radiographs of the chest in the frontal and lateral projections showed no abnormality. With no facts under law to show whether or not, major Whigham found nodular densities in 1986 that were evaluated in 1986 as being consistent with nipple shadows**

for medical reviews based on the longevity of the nipple shadows.

6. After receiving the June 18, 1991 VA denial for omission of medical facts based on Doctor Freedman's April 16, 1990 radiographic finding, by application, Ms. Edwards as a matter of law, asked the United States to correct Major Whigham's omission.

IX. **Judgment.**

Plaintiff is seeking monetary relief for Defendants having denied correction of the omission in an unlawful manner with issues before Defendants affirming entitlements are denied or later reduced as a result of receiving a grant one year after the fact for correction of the military record under agent orange. The civil record not adjudicated shows Defendants violated law when affirming in 1994 that Plaintiff did not file the correction application in a timely manner. The civil record also shows with finding of facts for U.S. District Court Plaintiff's correction claim and all monetary compensation for Defendants having violated law they have sworn to uphold is estopped. Defendants violated law when affirming a review for the 1986 Lateral X-ray film when knowing they destroyed these X-ray without review and then arbitrarily sent notice to Ms. Edwards and Senator Sarbanes that Plaintiff did not file the application in a timely manner. The record of proceedings before U.S/ District Court of Maryland affirm, Plaintiff filed the correction claim within statute, but the "Board" elected not to correct Major (Dr.) Whigham medical omission with finding of fact showing he chose not to write in the medical records a material finding for 2 1 cm nodular densities that may or may not have related to the cause of death. The civil record affirms Plaintiff is denied a fair forum for having the omission corrected or having the 1987 Lateral X-ray film read by a qualified Doctor. The civil record affirms the Court interpretation of law denied Plaintiff all justice with the civil record affirming it was error for Defendants to import a reasonableness standard into statue but no penalty of law was issued to affirm the admission of this error. All rulings went against Plaintiff regardless to admissions for Major (Dr.) Whigham having chose to omit a medical finding for Malcolm Grows Post treatment medical records. The civil claim affirms Plaintiff is denied the release of records, and the release of the 1986 Lateral X-ray film before destruction. However, Defendants affirm without review of the Lateral X-rays that "we are not prusauded that a diagnostic error occurred, thus correction is denied and all monetary claims for the omission is denied. Plaintiff finds, Defendants capriciously used Doctor

Whigham medical finding without review of the 1986 Lateral X-ray film to affirm in civil claim DKC-97-1533 the omission does not need to be corrected. Plaintiff is seeking monetary relief for Defendants having violated federal law with the civil record before Plaintiff affirming the 1986 Lateral X-ray film was not released in 1993 when WHMC.PSRD reviewed the medical records for resolution of the discrepancy in interpretation. And Ms. Edwards affirm Defendants did not release the lateral film so that it was available for Doctor Freedman's review. The civil record shows Defendants have asserted various allegations, all aimed at denying Plaintiff the right for having Major (Dr.) Whigham admitted omission of medical facts included in the medical records for the late Hartwell E. Edwards. Plaintiff is now before the Supreme Court seeking this Courts Ruling as a matter of law for defendants wrongful acts Plaintiff is seeking the Supreme Courts Ruling for, errors under federal laws and statutes used adversely against Ms. Edwards to deny correction of the (sic] 1986 radiology report with facts under law showing the United States knew Major Whigham in 1986 chose not to comment on radiographic findings for Malcolm Grows post treatment records. Plaintiff is also before the Supreme Court seeking a Ruling on U.S. District Court of Maryland ORDER of Res Judicata that bars the finding of evidence that Plaintiff would have used in a jury trial to affirm

Whigham medical finding without review of the 1986 Lateral X-ray film to affirm in civil claim DKC-97-1533 the omission does not need to be corrected. Plaintiff is seeking monetary relief for Defendants having violated federal law that the United States unjustifiably denied correction as Untimely 11 October 1994. Ms. Edwards submitted Doctor Freedman's 16 April 1990 finding to AFBCMR for correction 28 October 1992. See enclosed request for medical records correction, dated 28 October 1992.

Enclosed is a copy of the certified notice sent to the United States, dated 28 September 1998 and 16 October 1998 for right to sue under statutes for federal violations of constitutional laws that govern the request for correction of Malcolm Grows 1986 radiology report. This suit is for monetary relief, based on facts under law for correction of Malcolm Grows 1986 radiographic report that was given to the VA by Malcolm Grow for adjudication of entitlements from 1988 through 19 January 1993. And for, the United States refusal to correct Major Whigham omission for material medical facts in review from (1988-1993) for the 1986 military record.

Myra R Edward 18 Dec 1998
(Signature) (Date)

Pro Se Representative, Myra R. Edwards, 703-806-3425.

CERTIFICATE OF SERVICE

Service of this complaint under Rule 4 upon the United States shall be made through the delivery by the clerk to the Honorable Attorney General, or to an agent designated by authority of the Attorney General. I certify that on 18 December 1998, I mailed a complete copy of this complaint for Concurrent Jurisdiction of Plaintiffs Claim and attachments, to all parities addressed as shown below. First-class Postage paid by Myra R. Edwards.

Myra L. Edwards
Signature

Lynne A. Battaglia,
United States Attorney
ATTN: Kaye Allison,
Assistant United States Attorney
604 United States Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

AFBCMR
1535 Command Drive, EE Wing, 3rd Floor
Andrews AFB, MD 20762-7002

Department Of The Air Force
Legal Office
Malcolm Grow USAF Medical Center (MAC)
Andrews AFB, MD 20331-5300

Clerk
United States Court Of Federal Claims
717 Madison Place, N.W.
Washington, DC 20005

ENCLOSURES FOR U.S. COURT OF FEDERAL CLAIMS

Attached References

1. Malcolm Grow 1986 Uncorrected Radiology Report from Major Whigham

2. Motion to Dismiss... and Memorandum Of Law In Support Of Motion To Dismiss Plaintiff Complaint Or For Summary Judgment, dated 22 October 1997

3. Application for Medical Records Correction, dated 28 October 1992

4. Letter to HQ AFMPC/DPMDOA1, dated 6 March 1990

5. Letter from Doctor Ruxer, at Malcolm Grow dated 27 September 1989

6. Dept. of the Air Force Denial letter for Military Records Correction, and Record of Proceedings Air Force Board For Correction Of Military Records dated 11 Oct 1994

7. Department of Veterans Rating Decision showing date of rating with evidence being Malcolm Grows uncorrected reports of treatment from post service dated 06/15/94

8. Department of the Air Force response in writing on statue of limitation law governing correction of Military Records, dated 14 March 1990

9. Georgetown University Hospital Report from Doctor Matthew Freedman, Radiologist dated 4/16/90

10. Letter to Veterans Administration dated 1 May 90

11. Memorandum Decision, Before Judge Farley dated October 22, 1992

12. Statement Of The Case In The Appeal Of Hartwell E. Edwards, Summary Of Evidence and Adjudicative Actions Taken and Pertinent Laws and Regulations... VA case #XSS 513-30-5804

13. Letter from Doctor Schoenberger dated December 1990

14. Respondent Appellees Motion To Dismiss and Motion To Waive Requirements Of Federal Circuit Rule 27(d) dated January 19,1993

15. ORDER and Memorandum opinion From U.S. District Court For The District Of Maryland, dated 11 October 1996

16. Appendix with ORDER Before Judge Nebeker dated 6 November 1992 and ON MOTION from Secretary of Veterans Affairs dated 10 February 1993

17. Addendum To Record Of Proceedings Air Force Board For Correction Of Military Records, dated Mar. 31, 1997

18. Board of Veterans Appeal Denial Decision dated, 18 June 1981

19. Letter to Paul Sarbanes from Department of Air Force dated October 14, 1994

20. Chronological Health Record of Medical Care dated, February 10, 1986

21. Letter to SAF/MIBR, dated 16 February 1993

22. Letter to Executive Director AFBCMR dated 20 July 1994

23. Letter to SAF/MIBR dated 3 August 1993

24. Letters of Administration

25. Death Certificate of Hartwell E. Edwards

26. Correspondence concerning status of Military Records Correction, dated 12 April 1993

27. Correspondence concerning status of Military Records Correction, dated 20 October 1993

28. Reconsideration denial from Department of the Air Force/AFBCMR Letter dated November 22, 1994

29. Department of the Air Force/AFBCMR Letter dated 31 March 1997

30. DD Form 214

31. Letter to 11 MSS/IMS (FOIA) dated 11 May 1995

32. Letter to AFBCMR and 11 MSS/IMS (FOIA) 24 May 1995

33. Letter from Department of the Air Force/AFBCMR dated May 4, 1995

34. Letter from Department of the Air Force/AFBCMR dated May 22, 1995

35. Letter from Department of the Air Force/AFBCMR

dated March 28, 1995

36. Letter from Department of the Air Force/11 MSS/IMS (FOIA) dated 14 December 1995

37. Freedom of Information Request for duplicate copies of Malcolm Grows 1986 radiology film sent to: Malcolm Grow Medical Center and Department of the Air Force/AFBCMR dated 28 September 1998

38. Notice of right to sue for federal violations sent to: Malcolm Grow Medical Center and Department of the Air Force dated 28 September 1998

39. Notice of right to sue for federal violations sent to: Malcolm Grow Medical Center and Department of the Air Force/AFBCMR dated 16 October 1998

40. Certified notification of lawsuit sent to AFBCMR for non-response to various requests for documents/records in support of AFBCMR's military records correction denial, sent 4 August 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Myra R. Edwards
Plaintiff, Civil Action No. DKC-98-4190
v.
DEPARTMENT OF THE AIR FORCE
AFBCMR
MALCOLM GROW USAF MEDICAL CENTER
Defendants.

MOTION TO AMEND US DISTRICT COURT OF MARYLAND'S 29 JANUARY 1999 ORDER OR IN THE ALTERNATIVE REQUEST CIVIL RECORD DKC-95-3115, DKC-97-1533 & DKC-98-4190 GO ON APPEAL BASED ON JUDICIAL ERRORS BY THIS COURT FOR SUMMARY JUDGMENT THAT WAS NOT APPROPRIATE BASED ON EVIDENCE BEFORE THE COURT IN DKC-95-3115 & DKC-97-1533

Ms. Edwards is before the U.S. District Court of Maryland to request the Court Amend its ORDER for Judgment in favor of the United States or in the alternative to send the entire record "ON APPEAL" to the Clerk, United States Court of Appeals For the Fourth Circuit.

Ms. Edwards' filed the civil complaint against the United States October 14, 1995, see civil complaint DKC-953115. This complaint was filed under 5 USCS section 552 Freedom of Information Act, 5 USCS section 706 for Administrative review by the court, and under Rule 56, n

223 based on laws that govern Personal Knowledge of Major Whigham's 1986 radiographic omission. Under penalty of law, Ms. Edwards affirm her complaint before the US District Court of Maryland is for federal violations under law used to deny correction of Major Whigham's 1986 radiographic record.

The request for correction of Major Whigham's omission was given to the United States under the provisions of Title 10 USC section 1552. FACTS ON APPEAL are: The United States and US District Court of Maryland as a matter of law, erred in its findings, with proof on the civil record that dispute its finding for summary judgment in favor of the United States, based on the Defendant's assertion that the time bar, for denial under statute is governed by the late Mr. Edwards death certificate.

The civil record for this-Motion or in the alternative for appeal shows: Ms. Edwards met her "Burden of Proof" in the civil action that arose based on the United States 22 November 1994 refusal under FOIA to release records beyond the death certificate to support knowledge of Major Whigham's 1986 omission. The civil action before this court shows Ms. Edwards gave the US District Court of Maryland and the United States;

(a) A copy of Doctor Freedman's 16 April 1990 radiology report for his reading of duplicate 1986 radiology film from Malcolm Grow. Facts in admission for Major Whigham's 1986 radiographic record, rests on the United States Motion for Summary Judgment which shows the United States knew, Major Whigham chose to omit radiographic facts that were given to Ms. Edwards by Doctor Freedman 16 April 1990; (b) A copy of the application for correction of Major Whigham's 1986 radiographic omission under the provisions of Title 10 USC section 1552, for knowledge of Major Whigham's 1986 omission, based on Doctor Freedman's 1990 radiographic finding. See civil record for "Burden of Proof" under law that Ms. Edwards gave Doctor Freeman's radiology report and application for records correction, in civil action DKC-953115 to the United States and the US District Court of Maryland.

Civil complaints (DKC-95-3115, DKC-97-1533 and DCK-984190) arose based on the United States refusal to correct Major Whigham's omission by wrongfully using the statute of limitation law, which governs the federal application to bar correction.

As a matter of law, civil record DKC-95-3115 shows: The United States asserts the late Mr. Edwards death certificate establishes the time bar for the correction denial. Arguably the civil record is in dispute based on Doctor Freedman's radiology finding that sustains knowledge of the omission as a matter of law. See civil action DKC95-3115 and DKC-97-1533 which shows no Court Ruling or resolution on the time bar under statute, except for United States District Court of Maryland's Opinion, **that it may have been a error for the United States to use the late Mr. Edwards death certificate as the time bar for knowledge of Major Whigham's 1986 medical omission.**

11 October 1996 the US District Court of Maryland dismissed the FOIA request under civil action DKC-95-31.15. And the US District Court of Maryland, accepted the death certificate that will not sustain under law knowledge of Major Whigham's, instead of facts as a matter of law, based on Ms. Edwards assertion that Doctor Freedman's radiology report establishes the time bar for the correction denial. The civil record shows the US District Court of Maryland opined: **It may have been a error for the United States to use the late Mr. Edwards death certificate as the time bar for knowledge of Major Whigham's 1986 radiographic omission.**

MOTION for amendment or in the alternative to request appeal of the courts Judgment is for errors under federal law, based on facts in evidence for Doctor Matthew Freedman's 1990 radiographic record and the late Mr. Edwards death certificate. The United States Memorandum of Law or In the Alternative for summary judgment filed in civil action DKC-97-1533 shows the United States admits: Major Whigham in 1986 choose to omit radiographic facts that under statute and federal law Ms. Edwards asked be corrected for the evaluation of entitlements before the Veteran's Administration for the adjudication of entitlements from 1988 through 1994.

The case ON MOTION or in the ALTERNATIVE FOR APPEAL is based on errors under federal law, in civil action DKC-953115, DKC-97-1533 and DKC-98-4190 which shows the US District Court of Maryland failed to rule on knowledge of the omission in DKC-95-3115 under Rule 56, n 223, to include no ruling on knowledge of the omission in DKC-97-1533 and no ruling on the omission in DKC-98-4190.

The case on appeal shows the United States District Court of Maryland closed and barred the civil action after Ms. Edwards state the United States is challenging the date for discovering Major Whigham's- 1986 radiographic omission based on the finding of the Court that shows: No records based on the FOIA request were found to dispute, Doctor Freedman's 16 April 1990 date for knowledge of the 1986 omission. Ms. Edwards under penalty of law, is before the court for **errors on the civil record, that is sustained by**

evidence in dispute for knowledge of Major Whigham's 1986 omission, which shows the United States wrongfully denied correction of the application as not being timely filed.

Ms. Edwards is before the United States District Court of Maryland to request amendment of this court's 29 January 1999 ORDER and Memorandum Opinion, based on Rule 56, n 223. The civil record shows this Court Opined AFBCMR released the death certificate for knowledge of Major Whigham's omission. And that, the death certificate may not meet the requirements of law, for knowledge of Major Whigham's medical omission. And that, the death certificate may not support the United States time bar for knowledge of the omission based on facts in evidence for the correction denial under statute. See DKC-95-3115 for the United States correction refusal based on the 22 November 1994 denial for reconsideration.' Facts based on the reconsideration denial brought Ms. Edwards before the US District Court of Maryland.

The civil record shows the United States asserts in the 22 November 1994 correction denial, that the application under statute was untimely. Thus, the United States barred correction under statute. The civil record shows the United States used the late Mr. Edwards death certificate as the time bar that arguably shows no issues in dispute. And that the US District Court of Maryland opined: **The important point, as far as the United**

States was concerned for the correction denial was not when Plaintiff actually became aware of the relevant facts for requesting the medical records correction, but rather when Plaintiff reasonably could have discovered Major Whigham's 1986 medical omission.

The civil record shows the US District Court of Maryland remanded DKC-95-3115 to the United States based on errors under law for the civil complaint. And that, the United States, Addendum To Record of Proceedings Air Force Board For Correction Of Military Records shows: The United States concluded: Although we denied the application for correction based on the statute of limitation law, this fact is now irrelevant, based on the United Stares finding before the United States District of Maryland that the omission even though denied in violation of federal law, did not raise issues of injustice which require resolution on the merits.

The United States District Court of Maryland, granted summary judgment in favor of the United States in civil action DKC-97-1533 without ruling on knowledge under statute, based on facts in admission for Major Whigham choosing to omit a radiographic finding that is governed by federal laws and statutes for the timely correction request.

Facts on appeal based on the US District Court of Maryland's ORDER barring correction under the doctrine of res judicata is: As a matter of law, this Court has not ruled on knowledge of the omission in DKC-95-3115 or DKC-971533 or under DKC-98-4190 based on the instant complaint filed under statute for federal violations that are sustained by law under 28 USC section 1346 for wrongful acts by the United States and 28 USC section 2401 for "Time to commence action against United States which states (1) Except as provided by the Contract Disputes Act of 1978, every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. Right of action for this civil complaint accrued 11 October 1994 and 14 October 1994, see civil action DKC-98-4190 with facts under law showing Ms. Edwards brought forth her complaint against the United States 14 October 1995 based on the United States correction refusal under statute, see correction denial dated 22 November 1994, also see civil action DKC-95-3115 for facts under appeal.

On Motion is Plaintiffs request to amend the Judgment of the Court or in the alternative to request the US District Court of Maryland send the entire civil record to: United States Court of Appeals For The Fourth Circuit for errors as a matter of law in granting Summary Judgment to the United States with a dispute based on records in admission before this court, which shows "The important point, as far as the United States is concerned, is not when under statute Ms. Edwards actually discovered the omission,. based on Doctor Freedman's radiology finding, but when she reasonably could have discovered Major Whigham's omission (as evidence by the late Mr. Edwards death certificate).

The civil record before this court shows the United States District Court of Maryland granted Summary Judgment in favor of the United States without resolution of facts under statute based on the United States assertion that the late Mr. Edwards death certificate sustains facts under federal law that bars correction of Major Whigham's 1986 omission. And that relief based on evidence in dispute for the omission (as evidence by Doctor Freedman's 1990 radiology report) is barred under Ms. Edwards DKC-98-4190 civil claim.

As a matter of law, DKC-98-4190 requests a ruling based on the US District Court of Maryland's finding in McFarlane v. Secretary of the Air Force for wrongfully denying correction of Major Whigham's medical omission based on federal law that shows: Ms. Edwards claim for entitlements was before the Veterans Administration with errors in admission for the United States medical records (from 19881994). See instant complaint, under the provisions of 28 USC section 1346 issued 28 December 1998 for civil action DKC-98-4190 based on regulatory statutes.

On record before this court is Ms. Edwards Grounds for suit, dated 14 October 1995 requesting the release of records under the Freedom of Information Act (FOIA) based on the United States assertion for knowledge of Major Whigham's radiographic omission. Civil complaint DKC-98-4190 shows the right action accrued 11 October 1994 and 14 October 1994 based on the United States refusal under statute to correct Major Whigham's omission. With facts under law that shows, Ms. Edwards brought correction denial to the US District Court of Maryland based on the United States refusing to reconsider request, and stating if the 16 April 1990 date, based on Doctor Freedman's radiology report is correct for knowledge of the omission'; the application for correction would then be timely filed. However, the civil record shows, the United States wrongfully used the late Mr. Edwards death certificate for facts under statute to deny correction.

Ms. Edwards have affirmed the date for discovering Malcolm Grows 1986 radiographic omission-is 16 April 1990, and that under penalty of law, she requested correction within statute.

Ms. Edwards Motion is for a Judgment on amending the US

District Court's ORDER, or in the alternative request the record go on appeal based on errors under federal law and statutes that govern the application of law. Based on the Unites States wrongfully denying correction of major Whigham's 1986 radiographic omission and for relief, as a matter of law, as stated in civil action DKC-98-4190.

Request the Honorable Court send notice of amount due for appealing the United States District Court of Maryland's 29 January 1999 ORDER.

Myra R Edwards (Signature)   29 Jan 1999 (Date)

Pro Se Representative, Myra R. Edwards, 703-806-3425.

CERTIFICATE OF SERVICE

This Motion To Amend US District Court of Maryland's ORDER issued 29 January 1999 for DKC-98-4190 for resolution of facts in dispute in DKC-95-3115 and DKC-97-1533 or in the alternative to request civil case ON APPEAL before the United States Court of Appeals-For The Fourth Circuit, is being sent this 5th day of February 1999 to all addressees shown below by first class mail, postage paid by Myra R. Edwards. Ms. Edwards is sending this Motion to the US District of Maryland, by certified mail, return receipt requested, article number Z 571 694 598.

(Signature)

CC:
Lynne A. Battaglia,
United States Attorney
ATTN: Kaye Allison,
Assistant United States-Attorney
604 United States Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

Honorable Janet Reno,
Attorney General
Department Of Justice
10th and Constitution Avenues, N.W.
Washington, DC 20530

Assistant United States Attorney
Larry Adams
6625 United States Courthouse
101 W. Lombard Street
Baltimore, MD 21201

AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, MD 20762-7002

Department Of The Air Force
Legal Office
Malcolm Grow USAF Medical Center (MAC)
Andrews AFB, MD 20331-5300

Department of Justice
Ms. Monica Palko
1100 L. Street
Room 10140
Washington, DC 20530

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MA-RYLAND

MYRA R. EDWARDS

v. CIVIL ACTION NO. DKC-98-4190

DEPARTMENT OF THE AIR FORCE
AFBCMR
MALCOLM GROW USAF MEDICAL CENTER:

..000..

ORDER

On February 8, 1999, Plaintiff filed a document titled as a Motion to Amend Order or in the Alternative Request (to] Go on Appeal. (Paper No. 8..) Inasmuch as the motion was filed 10 days after the entry of an order dismissing this case and concerned a substantive challenge to that ruling, it was construed as a motion to amend or alter judgment, filed pursuant to Fed. R. Civ. P. 59(e).

Ms. Edwards has chosen to file her Fed. R. Civ. P. 59(e) motion simultaneously with her notice of appeal. However, her filing of a Notice of Appeal prior to this Court's ruling on her timely Fed. R. Civ. P. 59(e) motion nullifies that Notice of Appeal and does not invoke the Fourth Circuit's subject matter jurisdiction. See Fed. R. App. P 4 (a) (4) ; Britt v. Whitmire, 956 F.2d 509, 515 (5th Cir. 1992). Moreover, it follows that this Court is not divested of jurisdiction to consider her timely filed motion to alter or amend judgment. Trinati v. Heman, 845 F.2d 205, 205-06

(9th Cir. 1988) (District court retains subject matter jurisdiction to consider a timely Fed. R. Civ. Pro. 59(e) motion when filed after a notice of appeal). 'Woodard v. Hardenfelder, 845 F. Supp. 960, 965 (E. D. NY 1994) (district court retains jurisdiction to review timely post judgment Fed. R. Civ. P. 59 motion simultaneously filed with notice of appeal). Consequently, this Court is free to review the motion.

The undersigned judge dismissed this complaint as barred under the doctrine of res judicata. Ms. Edwards' Fed. R. Civ. P. 59(e) motion does not directly take issue with the basis for that decision. Instead, Plaintiff again challenges the decision of the Government and the Air Force Board for the Correction of Military Records ("AFBCMR") to refuse to correct a report entered in her husband, a medical record. (Id.) Plaintiff further challenges the prior rulings of this federal district court, alleging that she had met her "burden of proof" to set aside the AFBCMR decision. (Id. pp. 1-2.) The subsequent claims raised in the motion represent Ms.

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[1] To perfect her appeal, Ms. Edwards must file a timely notice of appeal after the disposition of the disposition of the motion to alter or amend judgment. Griggs v. Providence Consumer Discount Cc 459 U.S. 56, 61 (1982).

Edwards' continuing crusade to have her husband's medical record amended and her attempt to gain federal court review of the AFBCMR decision to deny her request to amend her husband's record. pp. 3-10.)

This Court has already ruled on the merits of Ms. Edwards, claims. See Edwards v. Dep't of the Air Force, Civil Action No. DKC-97-1533. Plaintiff had the opportunity to appeal that decision and chose not to do so. This Court has already concluded that she may not file an independent action, such as this complaint, as a means to set aside that earlier judgment. In sum, she has failed to articulate a justifiable reason for altering this Court's January 29, 1999 decision. Therefore, her Motion to Amend or Alter Judgment shall be denied.

Accordingly, IT IS this this1st day of March 1999 by this Court hereby ORDERED that:

1. Plaintiff's Motion to Amend or to Alter Judgment (Paper No. 8) IS DENIED;

2. Plaintiff's Alternative Notice of Appeal (Paper No. *8)* IS NULLIFIED. Plaintiff is advised that should she wish to file an appeal, she must submit a renewed Notice of Appeal within the applicable time period; and

3. The Clerk of the Court MAILS a copy of this Order to the Plaintiff pro se.

/s/ ____________________________
Deborah K. Chasanow
United States District Judge

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
MYRA EDWARDS
PLAINTIFF
V
NO. 98-930C
UNITED STATES
DEFENDANT
ROOM 507. COURTROOM 6
NATIONAL COURTS BUILDING
717 MADISON PLACE N.W.
WASHINGTON, DC
Thursday
February 18, 1999

The parties met. Pursuant to the notice of the Judge, at 10:35 a.m.

BEFORE: HON. JOHN P. WIESE
Associate Judge

APPEARANCES:
For the Plaintiff:
MYRA R. EDWARDS, ESQ.
PRO SE
1120 Windemere Court
Fort Washington, Maryland 20744
301-265-1187

For the Defendant:
MONICA J. PALKO, ESQ.
U.S. Department of Justice
1100 L. Street, N.W. 8th Floor
Washington, D.C. 20530
(202) 307-6288

APPEARANCES:

For the Defendant:

STEVEN J. EHLENBECK, ESQ.
U.S. Air Force
1501 Wilson Boulevard, 7th Floor
Arlington, Virginia 22209
(703) 696-9119

SHELDON BOLASNY, ESQ.
Veterans Affairs
1120 Vermont Avenue, N.W.
Washington, D.C. 20005
(202 273-6321

PROCEEDINGS

10:35 a.m.

THE CLERK: All rise. The United States Court of Federal Claims is now in session. The Honorable John P. Wiese Presiding.

THE COURT: Good Morning.

ALL: Good Morning.

THE COURT: The Court is convening proceedings This morning to have a preliminary status conference in Myra R. Edwards who is appearing here pro se, versus The United States. And that is Case No. 98-930C. Ms. Edwards. I presume?

MS. EDWARDS. That's correct.

THE COURT: Would you be so as good to introduce Yourself on the record and give the reporter your home Address and telephone number, please.

MS. EDWARDS: My name is Myra R. Edwards. I reside at 1120 Windemere Court. And that's W-I-N-D-E-M-E-R-E. And that's in Fort Washington, Maryland. The zip is 20744. My home telephone number is 301-265-1187. My Daytime number is (703) 806-3427.

THE COURT: Thank you very much. Ms. Palko?

MS. PALKO: Yes. Your Honor.

THE COURT: Would you introduce yourself, please?

MS PALKO: Yes. Your Honor. My name is Monica J.
Palko. I'm with the department of Justice, commercial
litigation Branch. The address there is 1100 L. Street, NW
correspondence should be sent to Eighth Floor Classification
Unit, Washington, D.C. 20530.
I'd like to note that with me in the courtroom are
agency counsel on the case, Major Steve Ehlenbeck and Mr.
Sheldon Bolasny.

THE COURT: Why don't you move over, Ms. Palko,
and let Major Ehlenbeck sit at counsel's table where he is
supposed to be, and the other gentlemen also should be at
counsel's table.
introduce yourself and give us your agency, your address,
your telephone number.

MAJOR EHLENBECK: Yes Your Honor. I'm Major
Steven with a "V", middle initial J, last name Ehlenbeck,
E-H-L-E-N-B-E-C-K. And I'm with the Air Force General
Litigation Division. The address is 1501 Wilson Blvd,
7th Floor. And that's Arlington, Virginia 22209.
Work phone is (703) 696-9119.

THE COURT: Thank you. And if you'll swing that
microphone over let the gentlemen next to you introduce
himself.

MR. BOLASNY: Thank you. Your Honor. My name is
Sheldon, S-H-E-L-D-O-N, Bolasny, B-O-L-A-S-N-Y.

THE COURT: I'm sorry. B-O-

MR. BOLASNY: B-O-L-A-S-N-Y. And I'm with the Department of Veterans Affairs General Counsel's Office 1120 Vermont Avenue, NW, Washington, D.C.

THE COURT: Okay. You didn't have very far to go

MR. BOLASNY: No.

THE COURT: Welcome to our courtroom.

MR. BOLASNY: Very close in the rain here. And my phone number is 273-6321.

THE COURT: Thank you very much. Why don't I start with you this morning, Ms. Palko? You've given us a Memorandum that sets out a number of problems that you have with Ms. Edwards' case, and I think it would perhaps be the best way to proceed to have you address what these issues are, and then we could have Ms. Edwards speak to those.

MS. PALKO: Yes. Your Honor.

THE COURT: I presume Ms. Edwards has received a copy of this, has she not? Ms. Edwards?

MS. EDWARDS: Yes.

THE COURT: All right. Wherever you're most comfortable. All right. I, too, think better when I stand up. The thoughts rise more readily.

MS. PALKO: Your Honor, the United States won't reiterate all of the matters in its memorandum of factual and legal basis for dismissal.

THE Court: May I interrupt you one moment?

MS PALKO: Yes. Your Honor.

THE COURT: Did you receive a document dated- sorry. I thought I received something yesterday form Ms. Edwards. Yes. It was a document entitled, Plaintiffs Memorandum of Factual and Legal Basis.

MS. PALKO: No, Your Honor. I have not yet received that.

THE COURT: Now, that was filed on the 16th of February in court. We'll have Ms. Edwards tell us what's in that document, but please go ahead and proceed.

MS. PALKO: Thank you. The United States requests the Court to permit us to make an oral Motion to Dismiss. We believe it's appropriate for a number of reasons. First and foremost is that the Court lacks subject matter jurisdiction. This is an issue that cannot be reconciled in this case. Ms. Edwards does not cite a money-mandating statute, nor could she cite one. Recognizing the deference and accommodation that's usually granted to a pro se plaintiff, we did evaluate this carefully as did the United States District Court. I'll move to that separately.

THE COURT: To start us off, what do you think Ms. Edwards complaint is?

MS. PALKO: Your Honor, to the best we can discern, it appears to be an attempt to demonstrate that the Air Force is in some way responsible for a failure to diagnose her husband's cancer. That seems to be the crux of the case.

The irony, of course, is that even every civilian doctor that Ms. Edwards contacted regarding specifically only the 1986 x-ray report, which is apparently the only one complained to be deficient, that x-ray report did not note that although x-rays were taken from the front or the back, certain shadows on the x-rays were nipple shadows which show up in a healthy x-ray.

In fact, the first doctor was particularly solicitous saying, "We understand your grief. We understand how frightening this was." That some cancers spread very quickly, some spread very slowly. And the 1986 x-ray report shows a healthy lung. That's the first irony.

The second irony here is that Ms. Edwards already receives the maximum monthly benefits allocated to someone whose husband died as service connected, because he received a presumption regarding Agent Orange. Even though he died many years after he left the service, it was of a lung disease. So, he received this presumption.

This was provided by Mr. Bolasny to me recently.

I do have copies of the Department of Veterans Affairs letter stating she could receive no further monthly benefits. So, that leaves only a possibility of some sort of tort claim. That's all that could remain here.

And again, this Court obviously has no jurisdiction over a tort claim. But even then-this would be moving ahead, so I won't get into that right now. The district court already had every opportunity to rule on that matter.

So, as the United States understands it, it appears to be an effort to get the Board for the Correction of Military Records to change the 1986 x-ray report to reflect that there exists nipple shadows, which again are no indication of pathology.

So, arguably, even we before we get to the failure to cite a money-mandating statute, this could be termed a frivolous suit. So, for the lack of subject matter initially, subject matter requires that it be – she cite a money-mandating statute. But preliminarily, and this is Eastport Steamship, it must be a non-frivolous suit.

But then, moving beyond that and saying, "Okay, what didn't Ms. Edwards cover that she could have? What arguably is here?" Well, if the argument is that the Department of Veterans Affairs wrongly denied service connection, that would belong in the Federal Circuit. This Court lacks jurisdiction over that.

But if it's as we just addressed, if it's really a tort claim and she's seeking $3.5 million damages, it sounds like a tort claim monetary request, then this Court also lacks jurisdiction.

So these are the types of things that Ms. Edwards apparently couldn't even accommodate, you know, given multiple opportunity. You know, given a chance to show, "Well, you didn't cite this but what could you cite?" We looked into that, and I have reviewed it carefully with my reviewer, and we could find nothing. So that's the primary reason.

Another reason is that it's untimely, having been filed some seven years late. And I won't review that. We've cited that in our Memorandum.

And third and finally, her case has already been Adjudicated. It's hard to find someone whose case has been treated with more care than Ms. Edwards. And if the Court will permit, it started out with a request with the Department of Veterans Affairs who found a lack of service connection.

Motion for Reconsideration. Reconsideration also denied. Moved for the Board for the Correction of Military Records found two things. One, untimely. Second no merit. Goes to the United States District Court where the Assistant U.S. Attorney was handing the case. The Court found, "Hmm. Well, you really should have gone by a known by date, not an actual discovered, but could have discovered date. So, even though you said there are no merits, the real reason for your decision here was that it was untimely. Therefore, I'm going to remand it".

Ms. Edwards filed an appeal regarding a different Aspect of that case regarding a FOIA case. She'd alleged that the Government unlawfully withheld certain documents. The District Court found that that was not the case. She Appealed that to the 4th District. Adverse ruling from the 4th Circuit on remand. Before the Board for the Correction of Military Records, again, reached the merits of the case. Found no merits.

Again, appealed to the United States District Court who found no merit. Didn't appeal. Wouldn't have been timely. Filed again in United States District Court. That's when the Court, and this is the recent decision. It is attached to our Memorandum. Said, "Look, if I permitted you to proceed, you'd be facing sanctions here. Let's stop the madness." And the time to appeal that decision has not yet run.

This is why Mr. Bolasny is here and Major Ehlenbeck. It's the first time this Court has seen the case, but the Department of Veterans Affairs and the Government more generally, and certainly the Air Force, have Expended substantial resources from what arguably was a frivolous claim in the first place. And what arguably, Ms. Edwards knew was a frivolous claim because she contacted Three civilian doctors in advance.

So, Your honor, we believe for all these reasons dismissal is appropriate, and that the Court needs no further information than what is before it today.

THE COURT: Okay. Thank you very much, Ms. Palko. Ms. Edwards let's begin by you telling me what your claim is.

MS. EDWARDS: Thank you. I than you for this opportunity, and I see Ms. Palko did have the Veterans Affair come here. I don't know why. They aren't in this case.

Let' start with the Veterans Affairs. As far as the Veterans Affairs goes -

THE COURT: No, no, no. Let's start with telling me what your claim is.

MS. EDWARDS: Okay. My claim before you is in 1994, I requested my husband's medical records be corrected by Title 10, Section 1552, and I submitted it to the Air Force for correction. I don't know if you have a copy of that.

THE COURT: No, I don't need that. It would be just best if we keep a statement of the claim.

MS. EDWARDS: Okay. That was what it was all about. At the time -

THE COURT: Now, what was the purpose of your doing that? What ultimate objective did you have in mind?

MS. EDWARDS: At that particular time, I was pursuing a case with the Veterans Administration for benefits.

THE COURT: Benefits of what kind?

MS. EDWARDS: Service-connected benefits for his death. And I had a doctor's report from a Dr. Matthew Freedman who had found nodular densities. He couldn't confirm it because the Air Force only gave us one x-ray report. We had the frontal. We didn't have the lateral. And at the time I gave him the x-ray, I wasn't aware that there was two separate x-rays that he needed to review. But I had given the information to the Air Force. So they actually knew, regardless of what I knew and what the doctor himself knew. And I asked them at that particular time to correct the medical record. The Air Force refused to correct the medical record. I continued to fight to get them to correct the medical record.

THE COURT: Now, how did you do that? What did you do after you got the adverse Board decision?

MS. EDWARDS: I went back to them and asked them to reconsider it, to you know, or at least give me the

Reason why they refused.

THE COURT: Okay.

MS.EDWARDS: They refused to give me the actual reasons, and they refused to reconsider it.

THE COURT: And then where did you go?

MS. EDWARDS: Then, I went to the U.S. District Court of Maryland and filed a claim to get discovery as to Why they refused to correct the medical records. The U.S. District Court looked at my claim under FOIA, and they found that it was inappropriate for them to have denied based on the claim that - of the three years that I had discovered it with the statute of limitations. That was wrong because I had discovered it actually within the statute. But that judge never ruled on it. She gave it in footnote, but she never actually ruled on the error.

THE COURT: On what error?

MS. EDWARDS: The specific error on them denying based on my husband's death certificate. They used the death certificate -

THE COURT: I'm sorry. You're speaking now of the district judge.

MS. EDWARDS: The district judge.

THE COURT: And you went before the district judge asking the district judge to review the adverse decision of the Board for the Correction of Military Records.

MS. EDWARDS: Uh-huh.

THE COURT: And the judge remanded the matter to the correction Board. Is that correct?

MS. EDWARDS: She remanded it back to them, but she never ruled -

THE COURT: Well, I know. That isn't her job. Her job was to correct the error and have it go back and Have it reviewed.

MS. EDWARDS: She never corrected the error.

THE COURT: She wouldn't be the one to correct the error.

MS. EDWARDS: Oh, okay.

THE COURT: That's the function of the Correction Board.

MS. EDWARDS: Okay.

THE COURT: Now, the Correction Board examined the merits of your contention.

MS. EDWARDS: It went back to them.

THE COURT: And they looked at the merits this time as opposed to dismissing for lack of timeliness, and they found what?

MS. EDWARDS: Then they claim that it had no merit. But they also claim that Major Whigham - this is the x-ray we're talking about - chose to omit the radiographic finding that we had found.

After I found out that the Air Force actually
chose to omit it -

THE COURT: Chose to omit what?

MS. EDWARDS: The radiographic finding that we had found. The nipple shadows and nodule density.

THE COURT: But the Board looked at the merit of your claim. Is that correct?

MS. EDWARDS: I - from their standpoint, maybe they did. From mine, they didn't because they did not correct it. They didn't correct anything even though they -

THE COURT: Well, there may not in their view, have been anything that required correction.

MS. EDWARDS: But it did.

THE COURT: But that's your point of view, and that's why you're going to some objective observers to see whether there is a -

MS. EDWARDS: Well, the problem that you have is -

THE COURT: Well, but what happened after that?

MS. EDWARDS: Well, see, the problem that you have is this case was adjudicated by the Veterans Administration with the errors on record.

THE COURT: Well, but let us - I don't want to veer off the straight path. The Board - the Military Board

for the Correction of Records upon remand from the district
the court looked at the merits of your claim and decided that no
correction was warranted. There was no error.

MS. EDWARDS: But there was an error.

THE COURT: Now, what happened -

MS. EDWARDS: Okay.

THE COURT: Now, what happened after that?

MS. EDWARDS: After that, the U.S. District Court -

THE COURT: You went back to the district court?

MS. EDWARDS: Uh-huh, uh-huh.

THE COURT: And what did you say to the district court?

MS. EDWARDS: I had found these errors, you know -

THE COURT: What did the district court say?

MS. EDWARDS: Well, she dismissed the claim, but she never ruled on the error that she footnoted on. That was never ruled on.

THE COURT: Well, then if there is come deficiency in the district court's ruling, and I don't know whether you're -

MS. EDWARDS: well, I've asked for her to amend her finding.

THE COURT: Well , then -

MS. EDWARDS: That she hasn't come back on yet.

THE COURT: Well, then what are you doing here?

MS. EDWARDS: What I am here for is the Federal Claim.

THE COURT: Federal Claim?

MS. EDWARDS: Uh-huh, Federal.

THE COURT: I'm not sure I know what you mean by that.

MS. EDWARDS: In order to - in order to - after I get - if I get the records corrected because I'm going through all this trouble just to get these records corrected, which they seem to refuse to do even though they know they erred on it, the monetary relief comes through the U.S. Federal Claims Court.

THE COURT: But aren't you getting ahead of yourself?

MS. EDWARDS: I don't know.

THE COURT: Well, the record hasn't yet been corrected.

MS. EDWARDS: No.

THE COURT: You believe that its failure of correction bespeaks error.

MS. EDWARDS: Yes.

THE COURT: You have brought that matter to the district court's attention.

MS. EDWARDS: That's correct.

THE COURT: The district court either has the matter under consideration.

MS. EDWARDS: They do.

THE COURT: They do. At this juncture, we don't know what the district court's decision going to be. And if it's against you, the appropriate and only remedy that you have is to appeal the district court's decision to the Court of Appeals.

MS. EDWARDS: Oh, yeah. I will do that, sure.

THE COURT: But until there has been a final determination, there is no money claim.

MS. EDWARDS: Okay.

THE COURT: You have no basis upon which to make a demand against the United States Treasury.

MS. EDWARDS: Okay.

THE COURT: Okay?

MS. EDWARDS: I thought it kind of would coincide these two courts together.

THE COURT: Well, I have no - nothing in front of me that says that you're entitled to money.

MS. EDWARDS: Okay.

THE COURT: Now, I have to say the following to you. If what Ms. Palko says is true, then even as a result of a connection of these records so as to show what you think they ought to show, you still wouldn't have a basis for monetary relief in this Court, because what Ms. Palko says is that you are being compensated through the Veterans Administration to the fullest extent permissible.

MS. EDWRDS: I got compensated through the Veterans Administration only because I dropped the issue of the medical records and picked up a claim for Agent Orange because I went through my congressman.

THE COURT: But you can't get both.

MS. EDWARDS: I'm not even interested in whether VA pays me one extra dime or not. The AF owes my husband this correction, and the AF is going to give it to us. They know that they erred at the time of his - when he went in there to see them. They know that they omitted a finding, a medical finding that should have been a part of that record when it was adjudicated.

THE COURT: Okay. But if what you're seeking is just a correction of the record that you see as holding out no monetary consequences -

MS. EDWRDS: It does hold - it may hold out monetary consequences, because I've had them reevaluated by a medical doctor -

THE COURT: But we're told that even if the records are corrected to correspond with what you think are the appropriate medical findings, no additional compensation could be paid to you as a matter of law. I've been told - you heard it this morning, you are receiving the maximum.

MS. EDWARDS: I heard. They said for the VA, but the Air Force owes me for any error that they made on that record.

THE COURT: Well, I am not sure I know what you mean by "they owe you". If they mean by that, that they were negligent -

MS. EDWRDS: They were negligent correct.

THE COURT: You have two problems. Number one, you can - that would be in the law a tort. You can't litigate a tort here. I'm not even sure that you can litigate the type of tort that you're talking about against the United States in any court, because there are certain limitations to the Federal Tort Claims Act. And so, you may be expending a lot of emotional Energy, and you're going to wind up nowhere.

MS. EDWARDS: Well, I have six years under the tort for the United States. Is that correct?

THE COURT: Well, I hesitate to say yes or no. My - I have not dealt with the Federal Tort Claims Act in many years. I think there's a two-year limitation period. But the real problem is that you're not going to be able to identify any economic injury associated with this tort, because you are presently receiving all that the law

can allow.
So, whether it gives it to you under the hearing Of a tort, or it gives it to you under the hearing of physical injury due to the invasion of Agent Orange, or if it gives it to you from any other way, if all you're entitled to is the amount that you're receiving now, it's irrelevant what means they've chosen to give you that compensation. You're not entitled to more than you're now getting.

MS. EDWARDS: But that is through the VA. That -

THE COURT: But there is nothing beyond that which comes through the VA. There are -

MS. EDWARDS: No, no. I'm saying you keep bringing the VA in here. I'm not interested in what the VA is doing or isn't doing. VA and I have settled in '95. The Air Force and I have never settled, which is -

THE COURT: But once the service member has left the service, the compensation that may be owing as a result of those years of military service are managed by the Veterans Administration. They are not payments from the employing agency, meaning in your case, the Air Force. At this point in your life and the in the life of Your former husband, it was the VA. It is the VA that is in charge of the benefits that you're entitled to.

MS. EDWARDS: Even when you find damage from the

Air Force itself by going to a medical institution? This is Negligence by a medical institution.

THE COURT: But - all right. So then you're really - you're really talking about a malpractice action. You're saying, if I understand you correctly, that your husband was misdiagnosed. Had he been correctly diagnosed, there could have been a medical intervention that might have prolonged his life. And so, you're saying that because of this misdiagnosis, his death - his premature death resulted.

MS. EDWARDS: Correct.

THE COURT: I would dissuade you from pursuing that. There are enormous problems associated with what you're talking about. First of all, you have a medical record. From the little I heard and seen in the papers before me, will not support your contention no matter how most genuinely sincerely you believe it.

MS. EDWARDS: But you see, I need them corrected, because I don't need the United States to tell me that I don't have a case. I need to hear that from my own private physician. I need a copy of those x-ray film that I've asked them under FOIA. I need to receive that. I need to have it re-evaluated. One it's re-evaluated and my personal physician tells me, "Ms. Edwards, everything the judge told you this morning is exactly true, you have no

case, "then I am satisfied.
Until that day, No, I will not be satisfied because I'm looking at the person who already I must say committed the sin. And then they're going to tell me after the sin has been committed, that "you don't have a case here." I can't go with that. I need to find out for myself. And it's a simple matter. Release the medical x-rays. Let - both of them, all of them. Let me take them, have them evaluated. Let me find out fir myself if what you're saying is actually true. But I'm not going to take your word for it.

THE COURT: Wasn't all of this evidence before the Correction Board?

MS. EDWARDS: No. Well , I don't know what was before - no, it wasn't. No, it wasn't before the Correction Board. That's the problem.
The Correction Board was looking at the record as it was, uncorrected. That's was my major problem.

THE COURT: But in order to - you mean, uncorrected it failed to contain all the x-rays? Is that what you mean?
It failed to say anything about nipple shadows or nodular densities. That's not a part of the record.

THE COURT: But were there such x-rays?

MS. EDWARDS: Uh-huh, yeah. The x-rays were available at that time. And I got one x-ray. And I thought that was all there were. I didn't know there was two.

I went to Andrews. I asked for the - a copy of the 1986 x-rays. They gave me one. I carried it to a private physician. He examined them. He found nodular densities and nipple shadows, which be believed were consistent with nipple shadows but he couldn't confirm it. because he needed the second x-ray to find out if this was true.

I asked the Air Force to release it. They refused. As a matter of fact, I sent them another letter on the 28th of February, 1988 - '98, I'm sorry, asking them again to release these medical records - these medical films. Both of them. Everything that you got. They still refused.

So, maybe she's telling the truth. I can't argue that she is or she isn't, but from my perspective, until I find out, as far as I'm concerned, they're all lying. I need to know. It's just that simple. And they can save a whole lot of money, a whole lot of time, save a whole lot of energy from me by releasing those FOIA - those x-ray films and let me have them medically examined, everything, to see it that is true.

Now, if that's not true, then of course, I'm going to go back to the VA and I don't care how they overturn it. I don't care what they have to do. I don't care if they come back and tell me, "Even Ms. Edwards if this is the same thing you're going to get," they're going to correct their records and give it to me based on the finding that should have been.

THE COURT: Ms. Palko, what do you make of all of this?

MS. PALKO: Your Honor, I'd like to make three - actually, four brief points.

THE COURT: All right.

MS. PALKO: The first is just a comment. Ms. Edwards states that a finding that Dr. Whigham, one of the Military doctors, chose to omit the radiographic finding, as I believe is how Ms. Edwards phrased it.

MS. EDWARDS: That's the base - Air Force phrased it that way. It's in your memorandum, not mine.

MS. PALKO: The finding was that he chose not to state that there were nipple shadows. That's what that means.

The second, regarding the Court's question on a Remand, did the Board for the Correction of Military Records reach the merits of the case? The answer is "**YES**". And you can find that decision on the merits attached to the Complaint at Exhibit 17.

THE COURT: But Ms. Edwards says that the Board evaluation of the merits did not include all the x-rays that she maintains a complete diagnosis should have examined.

MS. PALKO: And in response to that, Your Honor, that was the very issue before the United States District Court. That was her FOIA claim. "They did not provide me this x-ray." The District Court was most solicitous of Ms. Edwards claim, and he found that there was nothing withheld, Nothing in the Air Force's possession that had not been Released to Ms. Edwards.

MS. EDWARDS: That's incorrect, Your Honor.

MS. PALKO: So, that's - just bear with me for just a second. That was an issue decided by a district court. Moreover, addressing the merits of that, getting into Doctors and the way they x-ray -

THE COURT: You know, it would be easier for the reporter if you sat, Ms. Palko. She's got good hearing, but not that good.

MS. PALKO: There are two ways to take a chest x-rays, front or back, side to side. This doctor chose to take front and back. Apparently, what Ms. Edwards is describing is one doctor saying, "Look, those are nipple shadows. But you know what? To be absolutely sure, you'd want to take it from the side because the nipple shadows don't show up there. No, I don't have any reason to believe that there's pathology there, that they weren't nipple shadows. But you know what? He could have taken some other x-ray that wouldn't have caused nipple shadows." And I think that's the issue here, although I'd be glad to evaluate the record or call the Assistant U.S. Attorney who handled it before the district court, because that's the issue. This was the FOIA issue that she appealed to the 4th Circuit, as the United States understands it.

THE COURT: All right. Do you have another point you want to make?

MS. PALKO: Just the final point was that when she says, "Look, when my civilian doctor tells me there are no merits here, I'll back off", because this, after all is why we're all here. It just seems to be never-ending. We have a quote directly from her doctor, and you Can find this at the Complaint Exhibit 13, at page 82. Very Directly, "You have raised the question whether this lung Cancer was related to the nodules seen on his chest film?" "The answer to this is no". Thank you.

THE COURT: Now, Ms. Edwards, what are you going to say?

MS. EDWARDS: We'll start with her claim - my FOIA claim with the U.S. District Court. It had nothing to

do with x-ray film, nothing whatsoever. That FOIA claim was based solely on the fact that they refused to release any information telling me why they were - wouldn't reconsider the claim.
The U.S. District Court, which I don't have it Exactly in her, but it is in the record. The U.S. District Court did state very clearly that all the Air Force had to Do was simply tell me why they would not release those records. What they released was my husband's death certificate. And the court found that they didn't believe the death certificate supported knowledge of the claim before them for the nipple shadows and stuff. What I had given them was Dr. Freedman's report, which did sustain, and it did - and it shows it was filed within the statute timely for a correction. Even, the Air Force said if they had accepted Dr. Freedman's medical report for the nipple shadows, my complaint would have been kindly filed.
The problem is they refuse to accept Dr. Freedman's medical report, and they chose to accept the death certificate, which made the complaint more than four years for the correction.
THE COURT: We're really not talking an issue of timeliness right now.
MS. EDWARDS: Okay. That's was the issue before the

Court. It was a - it was more in timeliness before the U.S. District Court, and it was more of them releasing the Information. And based on what they released, which was the death certificate, which is what they said that they were using - they did release that - and the application, there was nothing else to be released.

I have already given them the - Dr. Freedman's Report. And that's where the footnote came in where the U.S. District Court found that it may have been error for the Air Force to use the death certificate to deny correction of that record.

THE COURT: Well - but what we know that the District Court remanded the case to the Correction Board for an examination of the merits of the case. And we know that upon examination of the merits, the District Court found no - the Correction Board found no error in the medical records.

MS. EDWARDS: The problem with the Correction Board is they want to claim that even if the record is corrected, it won't change the issue. Now, that the basis of them saying there's no merit. While they're saying that, they're refusing to correct it to give me the opportunity to find out if their word is true.

They can't have it both ways. You can't tell me That there's no merit here and withhold all the evidence so I can't prove whether there's merit or not. It becomes a one sided issue.

THE COURT: Ms. Palko, keep your seat. If I understand what Ms. Edwards is saying, as she understands it, the Correction Board's decision finding no error in the medical diagnosis was based upon a set of x-ray films that she has not had access to.
Do you know what the Board had in front of it?

MS. PALKO: Yes, Your Honor. Major Ehlenbeck was kind enough to point it out for me. They speak directly to this issue in their report at Exhibit 17 to the Complaint. And if the Court will permit, I'd like to read two sentences out of that.

THE COURT: Exhibit 17 of the Complaint.

MS. PALKO: Yes, Your Honor. At page 3.

THE COURT: Exhibit 17 or -

MS. PALKO: Exhibit 17 to the December 21 Complaint Ms. Edwards filed.

THE COURT: December 21?

MS. PALKO: Correct.

THE COURT: Well, I don't have 17. I go through 15.

MS. PALKO: Your Honor, there are two sets of exhibits. They came stapled in separate binders.

THE COURT: I beg your pardon, I have do have 17.

All right you want me to go to page 3?

MS. PALKO: Yes, Your Honor. About halfway down, that paragraph B, which is the first paragraph on the page, you can see at the side it begins, "To the contrary, we do not find it unusual that Malcolm" -

THE COURT: I find that, I see that.

MS. PALKO: Okay, "Did not note the presence of the nodular densities." And we go on to say, "On the PA view of the1986 x-ray film, since the x-ray film taken on the same date from the lateral view did not reveal the nodular densities/nipple shadows."

So, what was before the BCMR were both x-rays.

And in particular, because the lateral didn't note nodular densities, they found it not odd that the doctor didn't note the nipple shadows that time.

THE COURT: Okay, Now, I take it what Ms. Edwards wants are copies of those two x-rays?

MS. EDWARDS: That's correct.

MS. PALKO: Your Honor, as I take it, that's what she sought before the district court, but the district court - I don't know what personally is in her possession, I just don't know that.

As I understand it, that's precisely the issue that went before the district court who was particularly solicitous, who reviewed it very carefully, and found that he Air Force didn't have anything that wasn't released this was appealed to the 4th Circuit, so I'm not sure what this Court could do -

THE COURT: Well, I'm not sure either.

MS. EDWARDS: This Court might not be able to do anything, but she is misstating the record. I did not go before the U.S. District Court to get radiology films. Never have. But I have in this new complaint gone before it and asking for it. And I don't know whether I'll receive them at this particular juncture or not, but I am asking for them now. And I'm asking for them basically by just what she just finished reading. We know now that there's two. There was a frontal and a lateral view. My doctor saw one view. I carried him one x-ray, and I thought that was all there was. Had he had it back in 1990 when I carried it to him, we probably wouldn't be standing here today. The problem is, they refused to release it. Now, I don't understand if everything that they're saying about the Air Force, then I don't understand the issue over these x-rays. Why are we fighting? They say it doesn't show anything. If I carry it to my doctor, he should come to the same identical conclusion. This shouldn't be an issue here.

THE COURT: Okay. I accept that reasoning, Ms.

Edwards. But now let me ask you something. Where do we go From here? Supposing you get the x-rays and just supposing your doctor says, "Well, Ms. Edwards, it's not really that clear to me. X-rays are difficult to read. I can understand why the medical team and the Air Force read it this way. I might read it this way, I might not. I'm not sure."

Supposing your doctor says what I just imagined him to say, where do you go with that? What do you do with that?

MS. EDWARDS: It would have to me more definitive because if he doesn't say any more than that, it would be hard to present a case. But if he says that the lateral view does not substantiate a finding for nipple shadows or nodular densities, then I feel I have a legitimate case that can go forward.

THE COURT: A legitimate case for what?

MS. EDWARDS: For damage. It can go forward against the Air Force.

THE COURT: So, ultimately what you do want is money. It's not just the correction of the record for correction's sake.

MS. EDWARDS: Correct.

THE COURT: Well, I can tell you, Ms. Edwards, I don't have jurisdiction over tort claims..

MS. EDWARDS: Okay.

THE COURT: But I think that the claim that you posit would run afoul of the statute of limitations. Any information of the sort that you seek from the Air Force, you could have gotten on your own through x-rays taken at the time your husband was ill.

MS. EDWARDS: See, the problem was -

THE COURT: What I'm trying to tell you is just assume that all the facts come up in your favor. You go forward with a tort claim. What I'm trying to tell you is I think you're going to run into a statute of limitations problem that's going to be overwhelming.

MS. EDWRDS: Well, the statute should actually run from the time that I discovered the error. And the time that I discovered the error was 1990.

THE COURT: Well, but when the means of knowledge is at hand, then it's not enough to say, "Well, the x-rays were in the Government's files." You could have gone out and gotten your own.

MS. EDWARDS: No, I can't. They won't release them. I have asked them -

THE COURT: No, no, Your husband could have gotten an x-ray -

MS. EDWARDS: My husband was dead when I found out.

THE COURT: But the diagnosis of cancer preceded his death, did it not?

MS. EDWARDS: Only 11 months.

THE COURT: There's an awful lot of time in 11 months to get an x-ray.

MS. EDWRDS: Well, we didn't know anything about the 1986 x-ray when he was dying. That didn't come up. The only way that 1986 x-ray came up was when I started pursuing a case through the VA. Had I not pursued anything through the VA, I wouldn't have never known anything about the 1986 x-ray, either. The VA wanted all of his medical records, to review them to see if anything was in there –

THE COURT: I see. So, his death was several years after 1986.

MS. EDWARDS: His death was 1988. And I didn't discover this until 1990.

THE COURT: And the diagnosis of cancer didn't occur until what year?

MS. EDWRDS: 1988-1987. 1987, yeah. A year after the x-ray had been taken.

THE COURT: Well, I don't know what issue the district court had before it on the Freedom of information Act Request.

My suggestion, Ms. Palko, would be to have Major Ehlenbeck go back to the Correction Board of whatever agency

in the Air Force might have the x-rays that are referred to In the Correction Board's decision. And what we understand from what you read to us from that Exhibit 17 is that there really were two x-rays, one being a side view and one being a posterior-anterior. A frontal if you will.
If you can find them, why not just make them available to Ms. Edwards? That seems to me the easiest way out of our problem.
MS. PALKO: Yes, Your Honor.
THE COURT: I think the District Court would like to see an end to this. The Court of Appeals would like to seen and end to this. I think Ms. Edwards would like to see an end to it.
Do you have Ms. Edwards telephone number?
MS. PALKO: Yes, Your Honor.
THE COURT: All right. Will you assure me that you will follow up?
MS. PALKO: Yes, Your Honor.
THE COURT: Okay.
MS. PALKO: I have –
THE COURT: Go ahead.
MS. PALKO: If the Court would be interested in including the record, I do have the statement of the VA that Ms. Edwards receives the maximum dependency indemnity compensation, and could no receive no further monthly

payment. I do have copies for Ms. Edwards if the Court believes that would enhance the record.

THE COURT: Well, it would be in supplementation of your Memorandum for Dismissal. I would accept that, yes.

MS. PALKO: Thank you, Your Honor.

THE COURT: But of course, what we've learned from the exchange we had this morning, is that what Ms. Edwards is doing is she's seeking x-ray data that if proves to contain the diagnosis or lend itself to a diagnosis that suggested her husband had cancer even at the time the non malignancy was seen or it was determined in the x-ray, then she would want to go forward with a tort action.

MS. PALKO: I understand.

THE COURT: So, what we can do at this point is try to get her the records and let her take her chances on the tort system. But I must tell you, Ms. Edwards, your claim is not going to succeed. You have a statute of limitations problem.

MS. EDWARDS: Even though it was before the court and the denial from the Air Force was before the court, and they continued to deny even in 1997? We only - before court action, we're only getting the records now in 1999 at this proceeding? The statute still runs?

THE COURT: Well I guess I shouldn't talk about a case I know nothing about and facts I know even less about. But what I see, though, is a situation where the records tells me that your husband was a very heavy smoker, smoked two packs a day.

MS. EDWARDS: Yes, he did.

THE COURT: And went through a period of dramatic weight loss in his closing years. And in those years, received an x-ray which upon diagnosis, failed to reveal any cancer. There comes a point where if you have reason to doubt the correctness of the medical diagnosis, the you're left - you have to go out and seek additional information on your own. In this case, you could have done that at the time. If this diagnosis didn't make any sense to you, and I suspect that it didn't, then you should have taken yourself to a private doctor and gotten an x-ray.

MS. EDWARDS: I did. That's the problem. I did. I just didn't have them all.

THE COURT: But the x-rays that you got were put into your possession.

MS. EDWARDS: They were. And I did. I did all the things that you're saying. That's my whole problem. But I didn't get everything. They only gave me the frontal. They didn't give me the lateral.
This would have been ended exactly like you're saying while the statue was running.

THE COURT: All right. Then, I'll take back what

I said about the statute

MS. EDWARDS: Thank you, Your Honor.

THE COURT: It's best for me not to speak about claims that are not before me and over which I have no -

MS. EDWARDS: No, I'm just telling you I have done everything that you have said. I agree.

THE COURT: Well, you're a good advocate, Ms. Edwards. You, obviously, very strongly believe in your case, and I admire that.

I just hope you don't wind up putting up so much physic energy into that it wears you down.

MS. EDWARDS: It doesn't. I've lasted for seven years. So -

THE COURT: Well, but there comes a time to put certain things behind you.

MS. EDWARDS: Like I said, as soon as I get the x-rays and my doctor gives me the same finding that has been before the Air Force, if that's the end of it, that will be the end of it. I will rest it there.

THE COURT: Okay. Well, I will entrust your - the future pursuit of this case to Ms. Palko, who will endeavor to get the records for you.

I have to tell you that there is a motion before me now. We heard it this morning, and oral motion, which says in essence, "Judge, you don't have jurisdiction over this case," meaning no authority to say anything in respect to your case.

Ms. Palko also said that there is the case - the claim has been previously adjudicated, and I think she raises yet a third issue. But for my purposes and for purposes of her motion for me to dismiss, I have to grant the motion because what you present at this point. If we understand you, it may be a money claim, it would be a claim for negligence damages. And those can't be litigated in this court.

MS. EDWARDS: And I object to her putting anything in the record at this time with the VA and what I'm receiving. I don't think that is appropriate for the upcoming case, actually.

THE COURT: It's going to go into the record. I don't know that there's going to be an upcoming case, but if it's a record that pertains to the subject of this claim before me now, and it goes to support the Govermment's argument that you're being compensated to the fullest extent possible, and those documents relate with the contention that you don't present a money claim here -

MS. EDWARDS: But see, the problem that you have with that is a separate claim. That claim is an Agent Orange claim. It has absolutely nothing to do with the records of correction, period. Nothing whatsoever. So, you're talking apples and oranges here. And I don't see where the two should meet.

THE COURT: Well, she was only adding the document in substantiation of her point that you were

MS. EDWARDS: You know, I ran and got that myself. The Government didn't help me with Agent Orange. I dug up the information for Agent Orange. And in 1995, I laid to rest this particular claim before me now and I accepted the Agent Orange.

The problem I had with the Air Force still refused to release those medical records for me to prove one way or the other my claim against them. So, like I say, I don't see where the Agent Orange case has any relevance other than maybe by the time we come to, if we ever get to, the point of a claim against the Air Force. At that particular juncture if they want to introduce something into the record, it may apply. But right now, I don't see where that applies.

THE COURT: All right. If we understand that your claim ultimately relates to a claim for tort damages or negligence damages, ten on that basis, I can grant the Government's motion for lack of jurisdiction and we'll leave out the documents from the record that you think have no place here.

MS. EDWARDS: Thank you.

THE COURT: All right. Major, will you undertake to find for us what records you can, the x-rays, in Particular.
MAJOR EHLENBECK: Yes, Your Honor.
THE COURT: They may be hard to find.
MS. EDWARDS: They still have them, Your Honor. They're not hard to find.
THE COURT: All right. All right. Well, I'm going to grant your Motion, Ms. Palko.
MS. PALKO: Thank you, Your Honor.
THE COURT: Very good. Thank you all very much. And Ms. Edwards, have a safe trip home.
MS. EDWARDS: I thank you.
(Whereupon, at 11:25 a.m., the hearing was adjourned.)
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REPORTER'S CERTIFICATE

DOCKET NO: 98-930C
CASE TITLE: MYRA R. EDWARDS v. U.S,
HEARING DATE: February 18, 1999
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the United States Court of Federal Claims.

Date: February 18, 1999

Official Reporter
Heritage Reporting Corporation
1220 L Street, N.W.
Washington, D.C. 20005

In the United States Court of Federal Claims

No. 98-930 C

Filed: January 25, 1999

MYRA R. EDWARDS, Pro Se,	)
Plaintiff,	)
	)
v.	)
	)
THE UNITED STATES,	)
Defendant.	)

ORDER

SCHEDULING STATUS CONFERENCE

Pursuant to the agreement of the parties, a status conference is scheduled for 10:30 a.m., Thursday, February 18, 1999, United States Court of Federal Claims, Howard T. Markey National Courts Building, 717 Madison Place, N.W., Washington, D.C. The courtroom designation will be posted on the bulletin board in the lobby of the courthouse. The proceedings will be transcribed. Counsel shall appear in person.

/s/ ____________________
John P. Wiese
Judge

Department of the Air Force
Air Force Legal Services Agency (AFLSA)

24 February 1999

MEMORANDUM FOR Ms. Monica Palko
DOJ Commercial Litigation Branch
1100 L St., N.W., 10th Floor
Washington DC 20530

FROM: AFLSA/JACL
1501 Wilson Blvd, 7th Floor
Arlington, VA 22209-2403

SUBJCECT: Edwards Case - 1986 Lateral Chest X-Ray Film

I am writing to advise you of the results of my attempt to locate the x-ray film from the lateral chest x-ray taken of Ms. Edwards' husband in 1986. As you recall, at the hearing in the Court of Federal Claims on February 18, 1999, we were under the impression, based on the Addendum to Record of BCMR Proceedings (Exhibit 17 to the complaint), that the BCMR had the 1986 lateral x-ray film when they reviewed Ms. Edwards' case in early 1997. I have since learned that we were mistaken. The x-ray film was destroyed after 5 years in accordance with the Air Force records disposition schedule, as explained below.

Our belief at the hearing that the BCMR reviewed the 1986 lateral x-ray film was based on language in the decision (at page 3 of Exhibit 17 to the complaint) concluding, "we do not find it unusual that Malcolm Grow Medical Center did not note the presence of nodular densities/nipple shadows on the PA view of the 1986 x-ray film since the x-ray film taken on the same date from the lateral view did not reveal the nodular densities/nipple shadows." We assumed, wrongly it turns out, that the BCMR wouldn't know a lateral x-ray film was taken unless they had the film when they reviewed the case. Upon reading the BCMR decision more closely and talking with the examiner who worked the case, I learned that the BCMR's conclusion was based on the 1986 radiology report rather than a review of the lateral chest x-ray film. The paragraph at issue in the BCMR decision begins with, "[t]he 1986 Radiology Report indicates that standard x-ray film of the chest in the PA view showed no abnormality of the heart, lungs,..." (emphasis added). In fact, the 1986 radiology report, attached to the complaint at Exhibit 1, does include that PA (front/back) and lateral chest x-rays were taken. Based on that report, the BCMR reasonably concluded that the radiologist, was able to verify that the nodular densities on the PA film were nipple shadows, because they did not also appear on the lateral film.

The records disposition schedule for Air Force radiology records is attached (however not included with this document). Note that Rule 10 covers x-ray films made in connection with diagnosis and treatment of patients at medical facilities. That rule provides that such x-rays are destroyed after 5 years. Since Ms. Edwards' husband's 1986 chest x-ray films fell under Rule 10, they were destroyed in accordance with the standard disposition schedule. To verify this, I checked with Master Sergeant Joseph A. Koening, who is the Non-Commissioned Officer in Charge of Diagnostic Imaging at Malcolm Grow Medical Center. MSgt Koenig said that the 1986 films would have been destroyed at the beginning of the sixth year after the last x-ray taken of the patient. Since Mr. Edwards died in 1988, and also had x-rays taken in 1988, the 1986 x-ray would have been destroyed in January 1994. MSgt Koenig further stated that no records are created or maintained which would specifically reflect the destruction of the x-ray films in question.

I am sorry that the Air Force is unable to provide Ms. Edwards the 1986 lateral chest x-ray film. However, the records disposition schedule is designed to prevent accumulation of excess records by requiring destruction of x-ray films which are not considered medically significant after a reasonable period of time.

/s/________________________________

STEPHEN J. EHLENBECK, Major, USAF
Trial Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Myra R. Edwards
Plaintiff,
v. Civil Action No. DKC-98-4190
DEPARTMENT OF THE AIR FORCE
AFBCMR
&
MALCOLM GROW USAF MEDICAL CENTER
Defendants.

REQUEST ENTIRE CIVIL RECORD GO ON APPEAL FOR ERRORS BY UNITED STATES DISTRICT COURT OF MARYLAND ISSUED 1 MARCH 1999 FOR DISMISSAL OF CIVIL COMPLAINT THAT DENIED PLAINTIFF'S MOTION TO AMEND/ALTER JUDGMENT OF COURT'S ORDER THAT BARRED A RULING ON JUDICIAL FACTS NOT RULED ON BY THE UNITED STATES DISTRICT COURT OF MARYLAND WHEN GRANTING SUMMARY JUDGMENT IN FAVOR OF UNITED STATES

Plaintiff is before the court to-request United States District Court of Maryland's 1 March 1999 dismissal go on appeal for errors as a matter of law in granting summary judgment to United States with facts in dispute for knowledge of Major Whigham's admitted 1986 radiographic error that has not been corrected based on facts in dispute for knowledge of Malcolm Grows 1986 radiographic omission as shown by the Whigham radiographic report. Facts under appeal are: The United States District Court of Maryland is refusing to send the civil record to: United States Court of Appeals For The Fourth Circuit, and is refusing to Amend its ORDER for summary judgment in favor of the United States. See enclosed request to Amend US District Court of Maryland's 29 January 1999 ORDER; US District Court of Maryland's 29 January 1999 ORDER and this Court's ORDER issued 1st day of March 1999 denying MOTION was filed 10 days after entry of Court's ORDER dismissing case. On record is Plaintiff's Motion to Amend or in the Alternative request Record Go on Appeal, which shows by law, Plaintiff filed this claim exactly 10 days after entry by US District Court issued 29 January 1999. This appeal is also for United States assertion before the United States District Court I of Maryland that the late Mr. Edwards death certificate sustains under law, defendant's refusal to correct the late Mr. Edwards 1986 radiology record for facts in dispute based on statutes that govern the application for correction. This appeal is also for errors by the United States District Court of Maryland who accepted the Defendant's assertions for the death certificate instead of Plaintiff's medical facts given by Doctor Matthew Freedman in 1990 for knowledge of Malcolm Grows 1986 radiographic omission. With facts under law showing, the United States District Court of Maryland, state in its ORDER issued 22 d day of September 1998 that: Plaintiff took MSgt Edwards 1986 frontal x-ray, the x-ray on which the Whigham report is based, with no ruling on the merit of the Plaintiff's claim for knowledge of the omission, while granting summary judgment in favor of the United States without ruling on whether or not the application for correction was timely filed based on facts in evidence before this court.

Plaintiff is before this court to request the entire civil record -go on appeal to the United States Court of Appeals For the Fourth Circuit for errors under federal law based on this Court failure to rule on United States assertions for Knowledge of Major Whigham's 1986 radiographic omission. And for errors based on the Court's ORDER issued 1 March 1999 to state: Plaintiff Motion to Amend United State District Court of Maryland's judicial errors or in the Alternative, Request entire Civil Record go on appeal is being denied because Plaintiff did not file this motion within 10 days after the entry of an order dismissing this case and concerned substantive challenge to the Court's ruling. Enclosed is a copy of the Court's 29 January 1999 Order which shows the Clerk for the Court was asked to MAIL copies of this ORDER to Plaintiff. The Court filed the ORDER sent to Plaintiff 29 January 1999. Exactly

10 days after the Court filed its ORDER, showing no time under federal law is being allowed for delivery of Courts ORDERS sent by MAIL; Plaintiff filed the enclosed certified MOTION To Amend US District Court of Maryland's 29 January 1999 ORDER or in the Alternative Request Civil Record DKC95-3115, DKC-97-1533 and DKC-98-4190 go on appeal based on judicial errors by this court for Summary Judgment, that was not appropriate based on evidence before the Court in DKC95-3115 and DKC-97-1533. The enclosed certified MOTION to amend was sent by certified mail (article number Z 571 694 598) to the US District Court of Maryland to request the Court amend its 29 January 1999 ORDER. Plaintiff's MOTION to amend was delivered to the COURT by certified mail February 8, 1999. Exactly 10 days after US District Court of Maryland ruled on Plaintiff's Motion to Amend.

Therefore facts on appeal are: Plaintiff mailed the MOTION to amend the United States District Court of Maryland's 29 January 1999 ORDER, 5 February 1999 by certified MAIL which shows the Court received Plaintiffs MOTION to amend 3 days after it was mailed. However this fact is not sustained based on United States District Court of Maryland 1 March 1999 ORDER that denied entry of

Plaintiffs MOTION to amend or in the alternative request civil record go on appeal for errors of law by the court who denied Plaintiffs substantive rights in challenging facts in dispute for knowledge of the omission.

The enclosed ORDER issued by the United States District Court of Maryland, is also in error for Notice of Appeal prior to this court's ruling, as shown by Plaintiff's response to US District Court of Maryland 's ORDER for JUST CAUSE, dated 15 January 1999. The Plaintiff's response for Just Cause shows: The complaint before the United States District Court of Maryland is for errors under federal law as governed by statute of limitation laws, used by the United States to unlawfully deny correction of Major Whigham's 1986 radiology omission that the Plaintiff under the provisions of USC Title 10, section 1552 asked be corrected.

Facts on appeal before the Court include the United States assertions as follows:

Plaintiff filed application for correction untimely. Applicant did not file this request within three years, after the alleged error or injustice was discovered, or reasonably could be discovered, as required under federal law by 10, USC 1552 and Air Force Regulation 31-3.

Applicant has not shown a plausible reason for the delay in filing; and we are not persuaded that the record raises issues of error or injustice that require resolution on the merits.

The United States District Court of Maryland opined in its 11 October 1996 ORDER that:

(a) Summary judgment is inappropriate even if mere inferences can be drawn from the facts in dispute, United States ex rel. Milam v. Regents of University of California, 912 F. Supp. 868, 874 (D. Md. 1995)

(b) By law, summary judgment under Rule 56, Fed.R.Civ.P should be granted only where it is perfectly clear that there is no dispute about either the facts of the controversy or the inferences to be drawn from such facts.

(c) The United States ORDER issued 11 October 1996 shows this court was aware of the inference of error drawn by use of the late Mr. Edwards death certificate as the time bar to test timeliness.

(d) Page 9, of Court's ORDER opined: It may have been error for AFBCMR to use the late Mr. Edwards death certificate for timeliness in denying correction of the 1986 radiographic omission. The civil record shows the United States sent a copy of the late Mr. Edwards, death certificate showing date of death and Plaintiff's application for the records correction that was dated more than fours after her husband's death. Thus, as a matter of law, the civil record shows a genuine dispute of facts in admission as governed by federal law used to deny correction as untimely. With facts before the United States Court of Appeals showing the United States District Court of Maryland upheld the United States (AFBCMR's) denial without resolving facts in dispute for Plaintiff's knowledge of Major Whigham's 1986 radiographic omission and or correction of the United States 1986 radiographic omission. Facts before the United States Court of Appeals includes: No ruling by the United States District Court of Maryland in DKC-97-1533 to resolve the Court's finding that the United States erred in using the death certificate as the time bar, to include no ruling based on Judge Ellis in McFarlane v. Secretary of the Air Force, 867 F. Supp. 409 (E.D. Va. 1994).

Additional facts on appeal without resolution for facts in dispute before the US District Court of Maryland are:

(1) Doctor Freedman noted the presence of two 1 cm nodular densities projected over both of the late Mr. Edwards lower lung fields that the United States unjustifiably refused to correct by claiming under statute Plaintiff had knowledge of the omission four years before requesting correction. Thereby showing, the United States and the US District Court of Maryland refused to accept Plaintiff's admissions for knowledge of Major Whigham's 1986 omission based on Doctor Matthew Freedman's

1990 radiographic finding for duplicate copies of Malcolm Grows 1986 radiology film. The civil record for COURTS ORDER on page 6, in DKC-97-1533, dated 22 September 1998 shows, the court acknowledged Ms. Edwards in 1990 took MSgt Edwards's 1986 frontal x-ray to Doctor Freedman who reported finding radiology facts in omission for Major Whigham's 1986 radiology record.

(2) Facts under law, for this appeal shows, the United States admits in its Motion to Dismiss Plaintiff's civil claim issued October 1997, in civil complaint DKC97-1533, state on page 7, that Major Whigham chose not to include medical facts that by law based on the request for correction and United States 11 October 1994 correction denial were required by law to: 1. Be corrected or 2. Go to trial, based on facts in admission by the United States on whether the record in its uncorrected state, raise issues of error or injustice for resolution on the merits of Plaintiff's lawful correction request.

(3) The civil record shows United States District Court of Maryland granted summary judgment in favor of the United States with facts in dispute based on claims before the court to show knowledge of Major Whigham's 1986 radiology omission. With facts under law showing the

United States District Court of Maryland unjustifiably denied Plaintiff's substantive rights by granting summary judgment and barring Plaintiff's dismissed civil action under the doctrine of res judicata. See US District Court of Maryland's 29 January 1999 ORDER, Plaintiff's Response for Just Cause, Motion to Amend or in the Alternative... and this court's 1 March 1999 ORDER.

Plaintiff request appeal of United States District Court of Maryland's ORDER which bars a ruling on facts evidence for the following Defendant's 11 October 1994 assertions: See enclosed Record of Proceedings Air Force Board For Correction of Military Records issued 11 October 1994.

The application for correction was not timely filed based on knowledge of Major Whigham's 1986 radiographic omission. With no resolution based on the merits of the civil claim and no resolution on whether or not the United States violated federal laws and statutes governing the application for correction by refusing to accept Doctor Freedman's 1990 radiology finding for knowledge of major Whigham's 1986 omission.

For facts under federal law in dispute and shows the United States is claiming applicant did not file the correction request within three years after the alleged error or injustice, with facts under law showing the United States District Court of Maryland states in DKC-95-3115 on page 9 of Court's ORDER that: It may have been an error for AFBCMR to use this test for timeliness.

Civil action DKC-97-1533 notes on page 6 of the COURTS ORDER that while the United States argue, Major Whigham's 1986 omission does not make the medical record in error, the Court states: The Air Force have not provided Ms. Edwards with a copy of the lateral x-ray film for determination of nodular densities/nipple shadows, based on facts in omission based on the PA view. Thus, the civil record shows the Plaintiff is being denied a copy of Malcolm Grows 1986 lateral view radiology film with the Court granting summary judgment in favor of the United States with no facts as a matter of law, to show whether or not, Doctor Whigham's 1986 radiographic omission supports Doctor Freedman 1990 radiographic finding that does not conclusively determine a finding for nipple shadows. DKC-97-1533 shows the United States District Court of Maryland did not rule on facts in admission in civil action DKC-95-3115, based on knowledge of major Whigham's 1986 radiographic omission for determination under federal law on-whether or not the application for correction was untimely and raises no issues of injustice that should be granted relief as a matter of law.

This appeal is also for the United States District Court of Maryland barring Plaintiff's enclosed Freedom of Information Act (FOIA) claim issued under DKC-98-4190 for facts in admission based on the United States assertions for the late Mr. Edwards 1986 PA and lateral chest x-ray film and radiology reports, used by the United States to claim: The civil record shows no error of medical fact or injustice for the 1986 omission that is being denied correction, being denied relief, and being denied adjudication based on facts in error as shown in Plaintiff's DKC-95-3115, DKC-97-1533 and DKC-98-4190 claim for relief for United States admissions which shows as a matter of law: The United States knew Major Whigham chose to omit radiographic facts, the Plaintiff by application of law asked be corrected. See enclosed application for medical records correction. Request this court review the civil record for facts in evidence before the United States District Court of Maryland, for determination of knowledge of the omission and whether or not the United States violated statues governed by federal law in using the late Mr. Edwards death certificate to bar correction of major Whigham's 1986 radiographic omission. Also request the United States Court of Appeal determine whether or not, Plaintiff's request for correction should continue to be denied and whether or not plaintiff is entitled to relief See Plaintiff claim under DKC-98-4190 for Claim Under

Title 10... And Statute of Limitation Law governing Correction of USAF Medical Center's 1986 Radiographic omission.

Myra R. Edwards — 5 Mar 1999
(Signature) (Date)

Pro Se Representative, Myra R. Edwards, 703-806-3425.

CERTIFICATE OF SERVICE

This Request for Appeal of the United States District Court of Maryland's ORDER issued 1 March 1999, is being sent this 5th day of March 1999 by first class mail to all addressees listed below. And to: United States District Court of Maryland by Certified Request, Return Receipt Requested for article number P 207 266 669. A courtesy copy of the Appeal is being sent to: Clerk, US District Court of Appeals For The Fourth Circuit. All postage for the mailing of this Appeal is being paid by Myra R. Edwards.

Myra R. Edwards
(Signature)

Lynne A Battaglia,
United States Attorney
ATTN: Kaye Allison,
Assistant United States Attorney

604 United States Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

Honorable Janet Reno,
Attorney General
Department Of Justice
10th and Constitution Avenues, N.W.
Washington, DC 20530

Assistant United States Attorney
Larry Adams
6625 United States Courthouse
101 W. Lombard Street
Baltimore, MD 21201

AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, MD 20762-7002

Department Of The Air Force
Legal Office
Malcolm Grow USAF Medical Center (MAC)
Andrews AFB, MD 20331-5300

Department of Justice
Ms. Monica Palko
1100 L. Street
Room 10140
Washington, DC 20530

Clerk,
United States Court of Appeals
For the Fourth Circuit
US Courthouse Annex
5th Floor
1100 East Main Street
Richmond, Va. 23219

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS
v. CIVIL ACTION No. DKC-98-4190
DEPARTMENT OF THE AIR FORCE,
et al.

MEMORANDUM AND ORDER

Plaintiff, has moved to reopen this case based on allegedly newly discovered evidence not available for use in her two prior cases, 95-3115, DKC-97-1533. The complaint in 98-4190 was dismissed on grounds of res judicata, and that dismissal was affirmed on appeal. Under the most generous perspective, Plaintiff is attempting to obtain relief under Fed R. Civ. P. 60(b), in the two earlier cases. There is a one-year limit, however, for moving for relief from a judgment due to newly discovered evidence.[1] It is far too late to seek relief from those earlier judgments. Moreover, a litigant may not extend that period by filing a new action. While the judgment in 98-4190 was entered less than one year ago, on February 2, 1999, a motion must be filed within a reasonable time, but not later than one year. The "newly discovered evidence" presented by Plaintiff consists of transcripts and letters from February 1999. Even considering that this case was on appeal for some time this year, the court of appeals' affirmance occurred some months ago. This motion was not filed within a reasonable time. Accordingly, Plaintiff's motion IS DENIED.

s/ ________________________"
Deborah K. Chasanow
United States District Judge

Date: Nov. 12, 1999

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[1] The court expresses no opinion on whether the material presented constitutes "evidence" that has any relevance to the issues before this court.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS
Plaintiff,
v.
DEPARTMENT OF THE AIR FORCE
AFBCMR, et al.

MOTION TO REOPEN DKC-98-4190 BASED ON NEWLY DISCOVERED EVIDENCE AFFIRMING FEDERAL VIOLATIONS NOT IN ADMISSION BEFORE UNITED STATES DISTRICT COURT OF MARYLAND FOR CIVIL COMPLAINT DKC-95-3115, AND REMANDED COMPLAINT DKC-97-1533

The Plaintiff, Myra R. Edwards is before this Court again with newly discovered material facts not in evidence for civil complaint DKC-95-3115, or remanded civil complaint DKC-97-1533.

I. AFLSA/JACL letter dated 24 February 1999 and United States Court Of Federal Claims transcripts dated 18 February 1999 (civil complaint 98-930C) resulted from Ms. Edwards' requesting concurrent jurisdiction submitted to this Court 24 December 1998 (civil complaint DKC-98-4190) and to United States Court of Federal Claims 21 December 1998. AFLSA/JACL letter is a result of oral arguments before United States Court Of Federal Claims based on Defendant's Addendum To Record of Proceedings at entry 17. The enclosed records, AFLSA/JACL letter and hearing transcripts is evidence that was not before this Court and not know by Plaintiff before or when this Court closed and barred DKC-98-4190. Defendant's Addendum To Record of Proceedings was used to deny correction of Major Whigham's omission before United States District Court of Maryland (DKC-97-1533) to affirm no error or injustice data exists; therefore denial of the lawful correction claim is appropriate. AFLSA/JACL letter and the enclosed hearing transcripts (newly discovered evidence) affirm Defendant's violated Federal Law by unjustifiably denying correction of the 1986 omission pursuant to Federal Law in barred civil complaint DKC-98-4190 based on Defendant's assertions and finding of fact as shown by AFLSA/JACL letter and hearing transcripts for civil complaint 98-930C.

A. Defendants assert on page 3 (b) of its Addendum To Record of Proceedings: To the contrary, we do not find it unusual that Malcolm Grow Medical Center did not note the presence of nodular densities Ms. Edwards by statute asked be corrected. Since the lateral x-ray film not released under FOIA for the correction denials with facts in evidence showing Defendants assert the lateral x-ray film did not reveal (which is a unproven assumption) nodular densities based on facts in admission for the medical records correction in 1992. See Plaintiffs application for medical record correction in civil complaint DKC-95-3115.

B. Defendants reaffirm the issue of law in its Addendum To Record of Proceedings on page 2 under the Board Concludes... is: 1) Even if the contested 1986 radiology report were corrected to add a reference to the nodular densities/nipple shadows, it is not at all clear that this would help the applicant in her claim for benefits from the Veterans Administration, and; 2) in view of the Court's ruling in McFarlane that it was error for the Board to import a reasonableness standard into the date of discovery of the error or injustice for purpose of determining whether an application is timely filed, that the application be remanded to the Board for further proceedings. Showing the issue of law in DKC-98-4190 are facts in admission for Defendant's unsupported assertions with facts in discovery through the request for concurrent jurisdiction (AFLSA/JACL letter and hearing transcripts) not before this Court to affirm Federal violations based on Ms. Edwards lawful request for correction of Major Whigham's 1986 omission. Ms. Edwards is submitting AFLSA/JACL letter and hearing transcripts to affirm/show violations pursuant to Federal Law for the finding of fact when the Board assert they thoroughly reviewed the evidence of record in 1997, noting-the applicant's contentions, to affirm: **'No error or injustice exists in this case".** Facts in admission before this Court affirm Judge Ellis' ruled in McFarlane, it was contrary to Federal Law for Defendants to import a reasonable person test into the date of discovering an omission.. Ms. Edwards civil claim (DKC98-4190 affirm Defendant's contrary to Federal Law in 1994 denied correction of Major Whigham's omission in violation of Judge Ellis' ORDER for McFarlane. Ms. Edwards' civil complaint in DKC-98-4190 also includes the newly discovered evidence for the Board's unjustifiable assertions in 1997 as shown on Defendant's Addendum To Record Of Proceedings. Evidence in DKC-98-4190 for the 1997 correction denial affirms/shows Defendant's used language written for the contested record (medical facts in omission) to affirm no injustice data exists therefore, the 1986 record (with omissions used to deny Federal entitlements in 1994) pursuant to Federal Law should not be corrected. Facts in admission shows Defendants assert: It is not clear if the contested 1986 radiology report were corrected to add a reference to the nodular densities/nipple shadows, that this would help the applicant in her claim for benefits from the Veterans

Administration. The enclosed hearing Transcripts (98-930C) address the issue of law based on benefits from the Veterans Administration on page 37, lines 6-12 affirming Ms. Edwards is seeking the x-ray film Defendant's assert in its Addendum To Record Of Proceedings proves to contain the diagnosis or lend itself to a diagnosis that suggested her husband's cancer, even at the time the non-malignancy was seen, or it was determined by the lateral x-ray that a pre-existing condition was present, then she would want to go forward with a tort action. AFLSA/JACL letter shows the x-ray film Ms. Edwards asked be released under Federal Law in civil complaint 98-930C for the remanded case before this Court was destroyed by Defendant's in 1994 the same year Defendant's contrary to Federal Law denied Ms. Edwards correction request with facts before this Court affirming Judge Ellis ORDER in McFarlane. Facts in admission for Ms. Edwards, affirm Defendant's violated Federal Law for the 1994 correction denial before the Honorable Paul Sarbanes by using a reasonableness standard in Title 10 section lSS2 to deny correction of Major Whigham's 1986 omission.

II. Ms. Edwards' MOTION is for the reopening of civil complaint DKC-98-4190 and for Monetary Relief, based on Defendants unjustifiably refusing correction of Major Whigham's 1986-radiology omission in 1994 and 1997. Ms. Edwards is also before this Court in DKC-98-4190 for a ruling under Federal Law to affirm Defendant's contrary to Law based on Judge Ellis' ORDER in McFarlane wrongfully denied correction of Major Whigham's omission in 1994 when medical facts were before the Veterans Administration for entitlements. See Veterans Administration denial issued June 1991 and June 1994. The civil record for DKC-98-4190 affirms this Court barred Ms. Edwards' claim for correction under the doctrine of **res judicata** (29 January 1999) prior to Ms. Edwards' receiving the newly discovered facts (AFLSA/JACL letter and hearing transcripts) to affirm federal violations.

Ms. Edwards is also submitting Defendant's letter dated 14 October 1994 with attachments to Senator Sarbanes and Ms. Edwards to affirm the correction denial in 1994 was denied under statute, with Judge Ellis Ruling Defendants violated Federal Law in McFarlane v. Secretary of the Air Force.

Facts in admission for DKC-95-3115 and DKC-97-1533 affirm to-date the 1986 medical records remain uncorrected with facts in admission affirming: Ms. Edwards by application of Federal Law asked Defendants to amend its 1986 omission. Defendant's Motion To Dismiss... Memorandum Of Law For

Motion To Dismiss... affirm, Major Whigham chose to omit radiographic data not written in the medical records for the late Mr. Edwards. See Defendant's Memorandum Of Law For Motion To Dismiss... DKC-97-1533 bottom of page 7 and top of page 8 to affirm, Defendant's state Major Whigham **chose to omit a radiology finding** Ms. Edwards **under statute** asked be corrected. Facts in admission, Ms. Edwards' submitted the application for correction under statute to AFBCMR 28 October 1992. The civil record affirms Defendants wrongfully denied correction 11 October 1994 with facts in admission in DKC-95-3115 affirming Plaintiff was denied Veterans benefits June 1991 and 06/15/94 based on EVIDENCE from Defendant's for: Service medical records, Reports of treatment from post service medical records (which includes Major Whigham's omission) and Veterans Death Certificate (with facts in admission before this Court showing Defendant's contrary to Federal Law denied correction under statute by using the late Mr. Edwards death certificate to claim Ms. Edwards did not file a timely correction application). See enclosed notice from Department of Veterans Affairs issued 6/15/94 to affirm the issue pursuant to federal law shows correction was denied with Defendant's knowing Major Whigham chose to omit/exclude from the written medical record a finding for nodular densities, Ms. Edwards by application of law asked be corrected. Also see, Department of Veterans Affairs denial sent June 1991 (showing the civil record DKC-953115) states on page 4, paragraph 4: A chest examination at a military facility in February 1986 was interpreted as normal, with no abnormality of the lungs based on Major Whigham choosing to omit radiographic data that should have been apart of the medical record for evaluation of service benefits. Also see page 6 of the Veteran's Administration denial for 1991 to affirm in paragraph 3: "It is not shown that any of the radiographic abnormalities reported on-the veteran's chest x-ray examination during his military service were manifestations of the lung cancer which led to his death. Facts before this court, Ms. Edwards requested correction for determination under Federal Law if any of the radiographic abnormalities reported on the veteran's chest x-ray examination during his military service were manifestation of the lung cancer, which lead to his death. The consensus of the many doctors who reviewed Malcolm Grows medical records without knowing Major Whigham chose to omit a radiographic finding for nodular densities in 1986 opined the chest x-rays for military **service were not manifestations of the lung cancer** that led to death. See Doctor Ruxer's medical opinion dated 27 September 1989 given for civil complaint DKC-95-3115.

Also see Doctor Schoenberger medical report dated December 5, 1990 for DKC95-3115 showing the only reference to the 1986 issue is one episode of hemoptysis, to affirm, he began coughing up blood in 1986 without mentioning a finding for nodular densities.

Defendant's Memorandum Of Law In Support Of Motion To Dismiss Plaintiffs Complaint... filed October 1997, bottom of page 7, shows Defendant's assert there's no error or injustice with findings in admission from Doctor Ruxer and Doctor Schoenberger whose medical reports shows: **"No evaluation for nodular densities in 1986 based on facts in evidence in 1997 affirming Major Whigham chose to omit a finding for nodular densities for the PA and lateral 1986 x-ray views".** Facts before this Court shows, Defendants state: **"The fact that this doctor chose not to include a comment about nipple shadows does not make the medical record in error or inaccurate."** Ms. Edwards' response for Just Cause (DKC-98-4190), filed in this Court, January 19, 1999 states on page 5: **"The United States admits in the Motion To Dismiss... and Memorandum Of Law... entry 2 on page 7, that Major Whigham chose to omit radiographic findings under request for correction by statute".** Ms. Edwards state on page 1 of the Response for Just Case that: DKC98-4190 is for errors as a matter of law, under statute used wrongfully by United States (Defendants) to deny correction of Major Whigham's 1986 radiographic omission as untimely.

Mr. Edwards died in 1998; Ms. Edwards requested review of the 1986 and 1988 radiology film in 1990 prior to the Veterans Administration denying benefits in 1991 and 1994. Facts before this Court, includes the Veterans Administration denial that shows Major Whigham's radiology report with the omission (no reference for nodular densities) is included on the Federal record to affirm pursuant to Federal Law the late Mr. Edwards chest is Normal. The record for facts in admission before the Veterans Administration, 1989-1994 (correction denial) and this Court from 1995-1997 affirm: Ms. Edwards' correction request was denied even with Defendant's admitting in 1997 that Major Whigham **chose to omit radiographic data in 1986.** Facts based on the newly discovered evidence for DKC-984190 shows Ms. Edwards requested concurrent jurisdiction, to affirm: Correction is being denied contrary to law based on Judge Ellis Ruling in McFarlane; and as a matter of law for the finding of fact with Defendants asserting the 1986 lateral x-ray film shows Major Whigham did not error and there's no injustice for each correction denial.

Ms. Edwards' brought claim before this Court in 1995 based on Defendants refusing under FOIA to release records/documents used to affirm under Federal Law Ms. Edwards did not file a timely application. And under Title 10 section 1552 for correction of the military record.

This Court Ruled in DKC-95-3115 that **all** of Plaintiffs claims for relief are DISMISSED, affirming the civil record for correction is remanded based on Judge Ellis Ruling in McFarlane v. Secretary of the Air Force. See this Court's ORDER issued 11 October 1996 to affirm DKC-95-3115 was remanded and Defendant's Addendum To Record Of Proceedings dated 31 March 1997 was given to affirm no errors or injustice exists for the 1994 and 1997 correction denials. Page 12 of the 11 October 1996 ORDER from this Court states: beginning with; "In the instant case, Ms. Edwards asserts that she discovered"... The civil record DKC-95-3115, DKC-97-1533 and DKC-98-4190 affirms Ms. Edwards discovered the omission 16 April 1990. However the civil record for DKC-95-3115, DKC-98-1533 and DKC-98-4190 do not show a Ruling based on facts in discovery under statute to affirm Defendant's contrary to Federal Law denied correction of Major Whigham's omission as untimely in 1994.

Ms. Edwards submitted Doctor Freedman's 1990 PA x- ray finding to request correction of the medical facts in omission. Facts before this Court shows correction was denied in 1994 based on timeliness and correction in 1997 is being denied based on the Board affirming the uncorrected medical facts raise no issues of error or injustice.

Ms. Edwards is submitting the hearing transcripts for civil complaint 98-930C and AFLSA/JACL letter dated 24 February 1999, to affirm Federal violations for each correction denial.

Ms. Edwards requested by application of Federal Law that the late Mr. Edwards 1986 x-ray report be corrected as follows: "Bi-apical pleural thickening. Two 1-cm nodular densities projected over both lower lung fields are consistent with nipple shadows, although **films** with nipple markers would be valuable in **confirming** this. There's a diffuse interstitial pattern which is most prominent at the bases, and is consistent with mild interstitial fibrosis".

Facts before this Court, Defendant's assert in DKC-971533 that facts for the omission (contested 1986 medical record) was thoroughly reviewed based on Ms. Edwards contentions under federal law. Defendants also affirm the remanded record without correcting the omission **"raise no issues of error or injustice".** See Defendant's Addendum To Record of Proceeding, page 1, paragraph 1 under RESUME OF THE CASE to affirm the Board concluded the remanded civil record raised no issues of error or injustice.

AFLSA/JACL letter shows Defendant's violated Federal Law by using language in its Addendum To Record of Proceedings dated 31 March 1997 that lead to the belief the Board reviewed the 1986 lateral x-ray film. The Board assert Major Whigham omission for the posterior or anterior view front or back does not make the medical record incorrect or represent an injustice that Plaintiff should receive merit for. The Board asserts the presence of nodular densities not noted or commented on by Major Whigham in 1986 is affirmed as being consistent with nipple shadows based on the Board thoroughly reviewing the lateral x-ray film for the remanded civil complaint.

AFLSA/JACL letter shows Major Whigham's contested record rather than the 1986 lateral x-ray film was used for the remanded record to affirm no injustice data exists under Federal Law to deny correction based on Judge Ellis ORDER in McFarlane v. Secretary of the Air Force.

This Court's ORDER and Memorandum Opinion for DKC-953115 affirm Ms. Edwards under FOIA requested all records/documents Defendants used to assert, "No error or injustice exists for the 1994 correction denial". See enclosed Court ORDER and Memorandum Opinion issued 11 October 1996, page 8 to affirm Ms. Edwards requested records/documents pursuant to Federal Law for the 1994 correction denial.

Ms. Edwards is before this Court to request DKC-984190 be reopened based on facts in admission for concurrent jurisdiction affirming the Board under statute violated Judge Ellis ORDER for McFarlane in Edwards v. Secretary of the Air Force and the Board violated federal law before this Court by asserting the remanded record was thoroughly reviewed with the newly discovered facts (AFLSA/JACL letter) showing: The Board did not review the 1986 lateral x-ray film based on facts in admission for the correction denials. AFLSA/JACL letter also shows the 1986 lateral x-ray film were destroyed in 1994 the same year Defendant's first denied correction of Major Whigham's omission as untimely.

AFLSA/JACL letter shows the lateral x-ray film was destroyed two years prior to this Court remanding the civil complaint for further proceeding with facts before this Court affirming Ms. Edwards pursuant to FOIA requested ail documents/records the Board used to deny correction in 1994. See this Courts Order for DKC-95-3115 issued 11 October 1996 to affirm Ms. Edwards FOIA request for the release of records was dismissed.

Ms. Edwards MOTION to reopen DKC-98-4190 is based on her request for concurrent jurisdiction that includes facts in discovery for Defendant's Addendum To Record Of Proceedings at entry 17. See Plaintiff's claim under Title 10 Armed Forces Subtitle A Military Law, Section 1552, (4) (B) and Statute of Limitation Law governing correction of USAF Medical Center's 1986 Radiology Record - Denial 11 October 1994, submitted 24 December 1998 to affirm Ms. Edwards requested concurrent jurisdiction.

Ms. Edwards response to US District Court Of Maryland's ORDER For Just Cause (15 January 1999) prior to this Court barring DKC-98-4190 is shown on page 5 (3), beginning with: As a matter of law, Ms. Edwards is before the Court because the United States erred under statute 11 October 1994 and 14 October 1994 by denying correction of the radiographic omission as untimely. The United States admits in its Motion to Dismiss... Memorandum of Law In Support of Motion To Dismiss... entry 2, Major Whigham chose to omit radiographic findings that Ms. Edwards requested under statute be corrected. Ms. Edwards' continues by stating under Federal Law, Defendant's have refused to resolve the 1986 complaint based on the merit of the claim, see Defendant's Addendum To Record of

Proceedings entry 17, and Motion To Dismiss... entry 2.

Ms. Edwards filed DKC-98-4190 Under Title 10 Armed Forces Subtitle A Military Law, Section 1552... for wrongful actions under USC 28 section 1346. Thus, Ms. Edwards is before this Court to request DKC-98-4190 is reopened and that the newly discovered facts are entered on the civil record to affirm Federal violations for each correction denial. Prior to this Court barring DKC-98-4190 Ms. Edwards' state on page 4: This claim is for federal violations that occurred under statute. Ms. Edwards state the issue of law in DKC-98-4190 is Defendants refusal to correct its post treatment records as shown by these proceedings with Defendants knowing: Major Whigham chose to omit radiographic data under Federal request for correction. And Defendant's refusal for relief with facts in admission affirming Major Whigham's omission was used by the Department of Veterans Affairs to deny entitlements from 1989 through 1994. Facts before this Court, AFLSA/JACL letter shows, Defendants knew prior to this Court remanding the civil complaint that-the 1986 x-ray film were destroyed. Facts as a matter of law shows, based on the newly discovered evidence: Defendant's used language to mislead this Court and the Plaintiff into believing the 1986 x-ray film were reviewed based on facts in admission for the remanded civil complaint used to deny correction of Major Whigham's 1986 omission. AFLSA/JACL letter also shows, Defendant's knew the 1986 x-ray film had been destroyed when Veterans entitlements were denied in 1994 using post service records and the death certificate. AFLSA/JACL letter affirms Ms. Edwards is being unlawfully denied correction of the omission, and unlawfully denied compensation based on facts in evidence affirming correction was unjustifiably denied under statute in 1994 and unjustifiably denied after this Court remanded the civil complaint for further proceedings.

AFLSA/JACL letter is submitted for Defendant's assertions in its Addendum To Record of Proceedings at entry 17. This Court remanded (DKC-95-3115) for further proceedings and AFLSA/JACL letter shows contrary to law the contested 1986 radiology record was used rather than the 1986 radiology x-ray film to again affirm no errors or injustice data exists, to claim the medical record should not be corrected. AFLSA/JACL letter and the enclosed transcripts show **(Major Whigham's 1986 omission) is the material issue in dispute used to deny correction in 1994 and 1997.** AFLSA/JACL letter shows Defendant's under Federal Law unjustifiably denied correction and all claims for merit with facts in admission that Major Whigham chose to omit an abnormality revealed by reading the 1986 PA x-ray film. Facts in admission show previous doctors from 19791981 reported finding an abnormality they opined as being nipple shadows. The issue of law for Major Whigham's correction denials are: The omission has never been apart of the written radiology record for Malcolm Grows reporting of Medical Facts to the Department Of Veterans Affairs and other medical doctors. The civil record based on facts in admission for Major Whigham's omission shows: **No finding or evaluation for a abnormality/nodular densities** using Defendant's medical records under Federal Law for the finding of facts to affirm no injustice exists based on Ms. Edwards request for correction.

The enclosed letter to SAF/MIBR, dated 3 August 1993 shows Ms. Edwards told the Review Board where the 1986 x-ray film resides. The last page of this letter shows Ms. Edwards' states **"It may be necessary for you to formally request all chest x-ray film be kept for a period longer than the mandated five year time frame".** The civil records shows Ms. Edwards' prior to coming to this Court requested under FOIA all records/documents that support AFBCMR and the Review Board's subjective evaluation which denied her the right to have her late husband's 1986 radiology record corrected. See page 4 of this Court's ORDER and Memorandum Opinion issued 11 October 1996 to affirm Ms. Edwards' request pursuant to FOIA.

The civil records DKC-95-3115 and DKC-97-1533 affirm Defendant's **never stated** the 1986 x-ray films were destroyed in 1994. AFLSA/JACL letter shows Defendant's conclusions for the subjective evaluation are based on review of Major Whigham admitted omission. Thus, the newly discovered facts shows Defendants in DKC-95-3115 and DKC97-1533 contrary to Federal Law denied correction while knowing Major Whigham chose to omit radiographic data that can **never** be evaluated by reviewing the 1986 lateral x-ray film. DKC-95-3115 and DKC-97-1533 shows the contested medical record was **not corrected** and DKC-98-4190 shows the 1986 x-ray film were destroyed the same year Ms. Edwards' and Senator Paul Sarbanes received notification that the correction request was not timely filed.

On record (DKC-97-1533) Defendant's assert without correcting the omission: "The fact that this doctor chose not to include a comment about nipple shadows does not make the record in error or inaccurate". See Defendant's MOTION TO DISMISS and Memorandum Of Law In Support of Motion To Dismiss... pages 7 and 8 to affirm Major Whigham's omission is being used to deny correction. Also see DKC-95-3115 to affirm the issue of law based on

Judge Ellis' RULING to affirm Defendant's contrary to law used a reasonable person test to deny correction of Ms. Edwards' request in 1994. With the claim in 1997 being, **"The fact that this doctor chose not to include a comment about nipple shadows does not make the record in error or inaccurate".**

Ms. Edwards Response For Just Cause filed 15 January 1999 bottom of page 10 and top of page 11 states: Ms. Edwards is before the Court in DKC-98-4190 under the provisions of 28 U.S.C. section 1346 for judgment on whether or not her complaint is meritorious based on provisions of Federal Law. 29 January 1999 this Court barred DKC-98-4190 under the doctrine of **res judicata.**

Ms. Edwards civil claim shows benefits were denied from 1989-1994 based on facts in admission for the uncorrected x-ray report. And that under statute Ms. Edwards was denied correction with this Court remanding the civil complaint based on Judge Ellis Order in McFarlane. And finally this civil complaint shows Defendants unjustifiably used language in its Addendum To Record of Proceedings that lead to the belief under Federal Law that the Board reviewed the 1986 x-ray film. See enclosed transcripts pages 30-31 to affirm the assumption for the 1986 lateral x-ray film for the remanded record. See the transcripts pages 29-30 to affirm the issue of law for concurrent jurisdiction as being: Defendant's Addendum To Record of Proceedings at entry

17 also given to this Court to affirm, "No errors or injustice exists, therefore, Ms. Edwards under Federal Law should not be compensated for Defendant's unlawful acts and the record for correction should not be amended to show Doctor Freedman's 1990 radiology finding. Finally, see AFLSA/JACL letter to affirm the language used in Defendant's Addendum To Record Of Proceedings led to a mistaken assumption for the finding of fact before this Court to affirm: No injustice exists for each correction denial and compensation based on the merits of Ms. Edwards lawful claim under Title 10 section 1552.

Ms. Edwards' response for Just Cause states on page 11, last paragraph states, this complaint is for Defendant's denying correction of the 1986 omission as untimely under statute. Ms. Edwards by application of Federal Law in 1992 asked that the 1986 radiology record be corrected upon discovering in 1990 that Major Whigham omitted radiology facts for the finding and evaluation of nodular densities.

AFLSA/JACL letter is submitted to this Court to show an injustice for the finding of fact based on the Boards conclusions for the remanded claim. The Addendum To Record... at entry 17, shows the Board assert: "To the contrary we, do not find it unusual that Malcolm Grow

Medical Center did not note the presence of nodular densities/nipple shadows on the PA view of the 1986 x-ray film taken on the same date from the lateral view did not reveal the nodular densities/nipple shadows.

The issue of law for the above contention is the 1986 x-ray film was destroyed and the Board used the uncorrected record to affirm no injustice exists. The enclosed transcript for 98-930C also reveals the issue of Federal Law for the 1997 correction denial on pages 29-32.

The enclosed transcripts show Ms. Edwards requested copies of the lateral and PA x-ray film the Board used to affirm, "No error or injustice exists for the 1994 and 1997 correction denials". See pages 31, lines 16-25 and pages 32-36.

Page 37, lines 6-12 of the transcripts shows: Ms. Edwards is seeking the x-ray data that if it proves to contain a diagnosis or lend itself to a diagnosis that suggested her husband's cancer even at the time the non-malignancy was seen or it was determined in the x-ray then she would go forward with a tort claim. Ms. Edwards' argument shown here was based on admission for the remanded record that lead to the belief the Board reviewed the 1986 PA and lateral x-ray film Defendant's asserted were before the Board for review to affirm no error or injustice data exists for denial of the remanded civil complaint.

AFLSA/JACL letter shows the 1986 PA and lateral x-ray film were destroyed prior to this Court remanding the Civil Claim and at the time Defendants unjustifiably denied correction based on timeliness.

Ms. Edwards MOTION before this Court is for the reopening of civil complaint DKC-98-4190, requesting this Court rescinds its 29 January 1999 ORDER under the doctrine of **res judicata** based on facts in admission in 98-930C. Ms. Edwards MOTION is for proceeding under Title 28 section 1346 and for monetary relief based on facts in admission for Judge Ellis ORDER in McFarlane and for Defendant's wrongful actions based on the newly discovered facts showing correction of the remanded record is still being unjustifiably denied. See AFLSA/JACL letter and US Court of Federal Claims transcripts.

Facts in admission affirm this Court never RULED in favor of Plaintiff based on Judge Ellis Order in McFarlane. Ms. Edwards' requested correction in 1992; however Defendant's denied the lawful correction request in 1994 based on timeliness.

AFLSA/JACL letter affirms Major Ehlenbeck reviewed the BCMR decision more closely, showing he talked to the examiner who worked the case. Thus he learned, the BCMR's conclusions used to deny correction of the lawful claim was based on the 1986 radiology report rather than a review of the lateral x-ray film.

Defendant's 1994 denial letter to Ms. Edwards and Senator Sarbanes affirms the correction denial in 1994. Defendant's Addendum To Record Of Proceedings affirm the correction denial in 1997 before this Court, and the civil record affirms Ms. Edwards first filed claim for Defendant's wrongful actions in 1995.

AT ISSUE: Ms. Edwards' is being denied correction of Major Whigham's 1986 omission with Defendant's asserting: The correction claim is not meritorious. Facts in admission for barred civil complaint DKC-98-4190 shows Ms. Edwards' correction claim is meritorious and that Defendant's contrary to Federal Law denied Plaintiffs rights under statute for having the omission corrected.

III. SETTLEMENT. Ms. Edwards' is before this Court in DKC-98-4190 for monetary settlement based on facts in admission affirming federal violations. Ms. Edwards MOTION is for a ruling based on Judge Ellis ORDER in McFarlane to affirm Defendants violated Federal Law in 1994. Ms. Edwards MOTION is for federal violations in 1997 for the finding of fact before this Court for the remanded Civil Complaint with

AFLSA/JACL letter in admission affirming the 1986 x-ray film were destroyed in 1994 the same year Defendants denied correction of Major Whigham's omission as untimely. Ms. Edwards' MOTION is for settlement of the civil claim, to include granting relief in the amount of 4.5M. Ms. Edwards claim for monetary relief is based on: (a) Statute violations in civil Complaint DKC-95-3115 with facts in admission for Judge Ellis' ORDER in McFarlane v. Secretary of the Air Force. (b) Defendant's failure to inform this Court that the 1986 x-ray film were destroyed with facts in admission under FOIA for release of all record/documents used to deny correction. (c) For facts in AFLSA/JACL letter showing Defendants used language that lead to a false assumption based on facts in admission for the 1986 x-ray film. Showing the issue of law is: Defendant's affirm the Board reviewed the 1986 lateral x-ray film in 1997, to find, the Board reviewed the contested 1986 medical record to affirm before this Court, under Federal Law, Ms. Edwards' complaint was thoroughly reviewed, finding no error of injustice data exists. (d) For violating Ms. Edwards and the late Mr. Edwards rights under Federal law, protected by statute for having Major Whigham's 1986 omission corrected based on the 1992 application. (e) For violations under

Federal Law in 19861994 with facts in admission showing Malcolm Grows post treatment medical doctors with the omission was used for determination of Veterans entitlements that were denied from 1991-1994. 1995 as shown in the hearing transcripts Ms. Edwards submitted a claim for Agent Orange to Department of Veterans Affairs. The claim for Agent Orange shows, Ms. Edwards did not use the post treatment records to claim Federal violations based on facts in admission for Agent Orange. Agent Orange is a separate claim that does not include violations under Federal Law against the Defendants. (f) For denying correction and misleading the Court in 1997 by claiming Plaintiff's contentions for the contested 1986 x-ray report were considered. However facts in discovery shows, the Board disregarded Ms. Edwards contentions and used the contested record in 1994 and 1997 to affirm pursuant to Federal Law no injustice data exists for the denial of each medical records correction requests.

IV. If settlement cannot be reached, Ms. Edwards' MOTION IS FOR: REQUEST

1. This Court rescinds its 29 January 1999 ORDER under the doctrine of **res judicata** and reopen DKC-98-4190 allowing the newly discovered facts to be entered on the civil record, including facts already in admission in DKC95-3115 and DKC-97-1533 for trial before JURY, for the finding of fact to affirm:

Defendant's contrary to Federal law denied correction of Major Whigham's omission in 1994 and 1997 after this Court remanded the civil complaint based on Judge Ellis ORDER in McFarlane. Suit will also include the newly discovered facts for claim of monetary relief based on the JURY finding of Federal violations for each correction denial.

2. Copies of ALL RECORDS/DOCUMENTS/Hard Copy Reports and Copies of ALL REMAINING X-ray film from 1979 through 1988 be released/or shown by documentation as being destroyed pursuant to Federal Law for release of records Defendant's assert pursuant to Federal Law affirms: No error or injustice exists in civil actions DKC-95-3115, DKC-97-lS33 and barred civil complaint DKC-98-4190.

Sincerely,

/s/ ________________
Myra R. Edwards
Pro Se Representative
1120 Windemere Court
Fort Washington, MD 20744
Daytime 703-806-3425
Evening 301-265-1187

Certification Of Service

I certify that on 5 November 1999 this MOTION and all attachments for facts in discovery upon filing concurrent jurisdiction are being mailed to all addressees shown below by first class mail postage paid by Myra R. Edwards.

/s/ ______________
Myra R. Edwards

Honorable Paul Sarbanes
United States Senator
Tower 1, Suite 1010
100 S. Charles Street
Baltimore, MD 21201-2700

Department of the Air Force
Headquarters Air Force
Military Personnel Center
Randolph Air Force Base, TX, 78150-6001

Department of the Air Force
AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, MD 20762-7002

Department of the Air Force
Legal Office
Malcolm Grow USAF Medical Center
Andrews AFB, MD 20331-5300

Lynne A. Battaglia,
United States Attorney
ATTN: Larry Adams,

Assistant United States Attorney
6625 United States Courthouse
101 West Lombard Street
Baltimore, MD 21201

Honorable Janet Reno,
Attorney General
Department of Justice
10th and Constitution Avenues, NW
Washington, DC 20530

Clerk,
U.S. District Court
For The District Of Maryland
6500 Cherrywood Lane
Greenbelt, MD 20770

ATTACHMENTS

1. AFLSA/JACL letter dated 24 February 1999, Memorandum attachment and Record for Destruction of the 1986 x-ray film.

2. Hearing transcripts before the Honorable Judge Wiese dated 18 February 1999 for civil complaint 98-930C filed requesting concurrent jurisdiction.

3. Defendant's letter to the Honorable Paul Sarbanes denying correction in 1994 based on timeliness.

4. Addendum To Record Of Proceedings Air Force Board For Correction Of Military Records dated March 31, 1997.

5. Letter to SAF/MIBR dated 3 August 1993.

6. Department Of Veterans Affairs denial issued 06/15/94 showing evidence for: Service records, post treatment records and the death certificate.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS
Plaintiff,

v.

DEPARTMENT OF THE AIR FORCE
AFBCMR, et al.

NOTICE OF APPEAL FOR CIVIL COMPLAINT DKC-98-4190
PLAINTIFF FILED MOTION TO REOPEN DKC-98-4190
5 NOVEMBER 1999
REQUEST THIS COURT SEND ALL RECORDS FOR
DKC-98-4190 AND DKC-97-1533
TO UNITED STATES COURT OF APPEALS
TO AFFIRM PLAINTIFF IS
BEING UNJUSTIFIABLY DENIED CORRECTION
WITH THE ISSUE OF LAW BEING FEDERAL
VIOLATIONS
PURSUANT TO U.S.C. 28 SECTION 1346
BASED ON NEWLY DISCOVERED EVIDENCE
US DISTRICT COURT CLAIMS
NEW FACTS ALLEGEDLY SHOWS EVIDENCE
NOT AVAILABLE FOR USE
IN HER TWO PRIOR CASES
DKC-97-1533 AND DKC-98-4190

Ms. Edwards is before the Court to appeal United States District Court of Maryland's 12 November 1999 denial for Plaintiff's Motion To Reopen/Rescind the court's ORDER of res judicata in DKC-98-4190. Ms. Edwards received notice 24 February 1999 that shows Defendants violated Federal Law for the finding of fact used to affirm summary judgment in civil complaint DKC-97-1533. Ms. Edwards is requesting United States District Court of Maryland send this appeal and all attachments to United States Court Of Appeals for the Fourth Circuit. This appeal is for United States District Court Of Maryland barring Ms. Edwards request to reopen/rescind the Court's ORDER for DKC-98-4190 based on newly discovered evidence before Judge Wiese (98-930C). Ms. Edwards state the United States District Court erred when denying Plaintiff's 5 November 1999 MOTION by claiming: It is now too late under Federal Law to submit new material relevant evidence for civil complaint DKC-984190 to affirm federal violations for the finding of fact in DKC-97-1533.

Ms. Edwards' is requesting the following documents be sent to United States Court Of Appeals for the Fourth Circuit:

1. Enclosed letter from Margaret M. Earnest Clerk for United States Court of Federal Claims docket number 98-930C filed December 23, 1998.
2. ORDER Scheduling Status Conference filed January 25, 1999 for civil complaint 98-930C In the United States Court of Federal Claims.
3. Enclosed cover sheet docket number 98-930C from

United States Court of Federal Claims to affirm the claim under Title 10 Armed Forces Subtitle A Military law, section1552... was filed in United States Court Of Federal Claims 21 December 1998 under United States Code Annotated, Title 28 Section 1346, 242 subsec. (a) (2) ... and before United States District Court of Maryland (concurrent jurisdiction) 28 December 1998 under civil docket number DKC-98-CV4190.

4. Notice from Clerk's Office, United States Court Of Federal Claims to affirm on March 22, 1999 Transcripts of proceedings (vol. 1) for civil complaint 98-930C was taken on February 18, 1999.

5. Enclosed is a copy of the United States Court of Federal Claim transcripts. The enclosed transcripts for civil complaint 98-930C affirm the issue under Federal Law for each correction denial. Plaintiff is before the Court's because Defendant's are unjustifiably and contrary to Federal Law, denying correction of Major Whigham's 1986 radiology record that omits a PA x-ray finding before the Honorable Paul Sarbanes in 1994 and before United States District Court of Maryland.

6. Enclosed is a copy of AFLSA/JACL letter dated 24 February

1999 that was sent to United States District Court of Maryland 5 November 1999 for the finding of fact in civil complaint DKC-98-4190. AFLSA/JACL letter was also sent to Judge Wiese, see enclosed letter from U.S. Department of Justice dated March 2, 1999 to affirm the issue of law for the finding of fact is the late Mr. Edwards PA and lateral 1986 x-ray film.

7. Enclosed is a copy of U.S. District Court of Maryland's Civil Docket for the filing of civil complaint DKC-98-4190. This record affirms Plaintiff's case on appeal was returned from U.S. Court of Appeals 8/23/99 without benefit of review of the newly discovered facts for the 1986 PA and lateral chest x-ray film.

8. Enclosed is a copy of United States Court Of Appeals For the Fourth Circuit, **UNPUBLISHED** ORDER for case number 99-1342 to affirm the District Court's Order for res judicata is marked as "filed" on January 29, 1999. However, district court's records show that the order for res judicata was entered on the docket sheet February 2, 1999 prior to the enclosed Federal Court Hearing before the Honorable Judge

Wiese (18 February 1999). AFLSA/JACL letter is a result of Ms. Edwards efforts before Judge Wiese to locate the 1986 x-ray film based on Defendant's asserting the Board reviewed the 1986 x-ray film in 1997 for the remanded civil complaint before United States District Court of Maryland.

9. Enclosed is United States District Court's ORDER for DKC-98-4190 that affirms Plaintiff filed the instant complaint for damages pursuant to 28 U.S.C. section 1346 **"for a decision on whether or not the United States unjustifiably denied correction".** Page 2 of this Court's ORDER affirms Defendants reviewed their prior correction denial decision to affirm, Ms. Edwards' evidence does not warrant a change to her husband's medical records. The newly discovered evidence shows Defendants used the uncorrected medical record to assert before United States District Court of Maryland and United States Court of Federal Claims: **"we do not find it unusual that Malcolm Grow did not note the presence of nodular densities since the lateral x-ray film taken on the same date did not reveal nodular densities".**

10. The enclosed Memorandum and ORDER from United States District Court of Maryland shows the Court state: Ms. Edwards has

one year to move for judgment due to newly discovered evidence. Facts before the United States Court of Appeals, Ms. Edwards Moved within one-year after receiving the new evidence with facts in admission showing: United States District Court of Maryland **"expresses no opinion on whether or not the enclosed Court Ordered transcripts and AFLSA/JACL letter constitutes evidence for the finding of fact based on Defendant's admissions before the Court in DKC-97-1533".**

11. Request United States District Court send Plaintiff Motion to reopen DKC-98-4190, filed 5 November 1999 with attachments to United States Court Of Appeals.

The civil record shows Ms. Edwards' requested concurrent jurisdiction based on:

A. Defendant's Memorandum of Law In Support of Motion to Dismiss Plaintiff's civil complaint (DKC-97-lS33). Defendants assert: Major Whigham chose to omit radiographic facts not included on Malcolm Grows 1986 PA radiology record for the late Mr. Edwards and that, the omission does not represent an injustice under Federal Law.

Thus, Ms. Edwards filed the instant complaint DKC-98-4190.

B. Defendant's Addendum To Record Of Proceedings (DKC-97-1533) lead to the assumption the Board reviewed the 1986 PA and lateral x-ray film in 1997 after United States District Court of Maryland remanded civil complaint DKC-97-lS33 for further proceedings. Ms. Edwards wanted to receive a copy of the 1986 PA and lateral x-ray film used in 1997 to affirm as a matter of law, Major Whigham's omission does not make the medical record in error. Thus, instant complaint DKC-98-4190 was filed.

C. The civil record (DKC-97-1533) affirms United States District Court of Maryland did not rule Defendant's contrary to Federal Law denied correction of Major Whigham's 1986 omission with facts in evidence affirming: Ms. Edwards discovered the omission 16 April 1990. The civil record also shows Ms. Edwards requested correction of Major Whigham's omission 28 October 1992. Finally the civil, record shows Defendants contrary to Federal Law denied correction of Ms. Edwards lawful correction request in 1994 based on timeliness. However United States District Court never ruled after remanding the civil record (DKC-95-3115) based on Judge Ellis ORDER in McFarlane that Defendant's violated

Federal Law, thus the instant complaint DKC-98-4190 was filed.

United States District Court of Maryland opined in DKC-95-3115 (Court's ORDER and Memorandum Opinion) page 12 ... in light of Judge Ellis' ruling in McFarlane, the civil complaint will be remanded to AFBCMR for further proceedings. The undisputed fact before United States District Court of Maryland is Plaintiff did discover Major Whigham's omission 16 April 1990. And Plaintiff did request under Federal Law correction of Major Whigham's 1986 PA record omission 28 October 1992. The newly discovered evidence shows Defendants unjustifiably and contrary to Federal Law denied correction of Major Whigham's omission in 1994 and 1997. Plaintiff first filed her civil complaint before US District Court in 1995.

The civil record shows US District Court remanded the record (DKC-95-3115) in 1996. The civil record before the United States District Court of Maryland affirms Defendant's denied correction and relief in 1997 after the civil complaint was remanded for further proceedings. The issue of law for filing DKC-98-4190 in 1998 is: Defendant's assertions that lead to the assumption the 1986 PA and lateral x-ray film were reviewed in 1997 by the Board. Thus, Plaintiff filed the instant complaint for the finding of fact under Federal Law pursuant to U.S.C. 28 section 1346.

Defendants' Memorandum of Law In Support Of Motion to Dismiss Plaintiff's lawful correction state on pages 7-8: **The fact that this doctor chose not to include a comment about nipple shadows** does not make the records in error or inaccurate. Defendant's challenged the facts presented by Plaintiff in (DKC-97-1533) by asserting the omission does not create an error that requires relief, or make the civil record inaccurate. To include asserting, Plaintiff's civil claim is not meritorious. Therefore, Ms. Edwards filed the instant complaint DKC-98-4190 to affirm Defendant's are unjustifiably denying correction and relief pursuant to Federal Law.

Ms. Edwards came before United States District Court of Maryland to request by Motion DKC-98-4190 be reopened and that the Court's ORDER for res judicata be rescinded. Ms. Edwards made this request under statute nine-months after the civil hearing before Judge Wiese 18 February 1999. See hearing transcripts dated 18 February 1999 and AFLSA/JACL letter dated 24 February 1999.

The United States District Court is claiming Plaintiff's MOTION filed 5 November 1999 should be denied because the statue has long past for the finding of fact to affirm Defendant's violated Federal Law in DKC-98-4190. The civil record shows Plaintiff filed each civil complaint within statute based on facts in admission before United States District Court of Maryland. However this Court barred the finding of fact in civil complaint DKC-98-4190 and is now denying facts in admission before the Honorable Judge Wiese (civil complaint 98-930C) to affirm Federal violations in barred civil complaint DKC-98-4190.

AT ISSUE: Violations under Federal Law based on Defendants assertions in the Addendum To Record For Proceedings for the remanded civil complaint and Defendant's Motion To Dismiss... Plaintiffs claim. Also at issue based on United States District Court Of Maryland's ruling 12 November 1999 are the enclosed transcripts and

AFLSA/JACL letter sent to affirm Defendant's violated Federal Law with facts in admission affirming Judge Ellis' Ruled it was contrary to Law to import a reasonable person test in McFarlane for the 1994 correction denial. The civil record for Edwards shows Defendants imported a reasonable person test for' the 1994 correction denial while denying correction based on timeliness. The newly discovered facts shows Defendant's destroyed the 1986 PA and lateral x-ray film in 1994 while unlawfully denying correction of Major Whigham's 1986 omission. The newly discovered evidence also shows Defendants used language contrary to Federal Law in 1997 that led to the assumption the 1986 PA and lateral chest x-ray film are available for review. See enclosed transcripts and Ms. Edwards' civil complaint DKC-98-4190 and 98-930C filed for concurrent jurisdiction with the issue of law being: Defendant's assert in civil complaint 98-930C the Board reviewed both the frontal and lateral x-ray film in 1997 for the remanded complaint. And that the Board thoroughly reviewed the remanded record to find no error or injustice with the issue of law being: "we do not find it unusual that Malcolm Grow did not note the presence of nodular densities on the PA view since the lateral view taken on the same date did not reveal nodular densities". The enclosed transcripts (98-930C) affirms Ms. Edwards requested copies of the x-ray film the Board used in 1997 to determine the nodular densities reported for the 1986 PA were evaluated and confirmed to be nipple shadows.

Defendant's pursuant to Federal Law assert summary judgment is appropriate in DKC-97-1533 with the issue of law in DKC-98-4190 being the language used in Defendant's Addendum To Record of Proceedings that lead to the assumption summary judgment is appropriate because there are no issues in dispute. Facts in dispute: Ms. Edwards requested correction of the late Mr. Edwards 1986 PA x-ray report based on Doctor Freedman's 1990 radiology finding for duplicate copies of Malcolm Grows 1986 PA x-ray film. Defendant's refused correction by stating even though Major. Whigham chose to omit a finding for the 1986 PA view, the lateral view affirms no error or injustice data exists for the finding of fact. Therefore all of Plaintiff's claims for relief and correction of the 1986 medical record should be denied.

Pursuant to Federal Law Plaintiff brought suit (DKC

98-4190) to affirm violations as a matter or law used unjustifiably to deny correction and relief based on facts in admission for: Major Whigham choosing to omit a radiographic finding Ms. Edwards pursuant to statute under Title 10 section 1552 asked be corrected. The civil record shows Plaintiff submitted civil complaint DKC-98-4190 under statute December 1998 for the finding of facts not before United States District Court of Maryland who granted Summary Judgment to Defendants while affirming no hearing on the merits of Ms. Edwards civil claim is necessary. The civil record also shows: United States District Court Of Maryland barred civil complaint DKC-98-4190 under the doctrine of res judicata January 29, 1999 with the District Court Records showing the Court's ORDER for res judicata was entered on the civil record February 2, 1999. The civil record shows Plaintiff filed response under Just Cause, to affirm the facts for Federal violations in DKC-98-4190. The record shows United States District Court of Maryland affirmed the ORDER for res judicata and that United States Court of Appeals also affirmed this order without benefit of the newly discovered facts (AFLSA/JACL letter and civil transcripts).

The enclosed order from United States Court of Appeals affirm this Court upheld United States District Court of Maryland's ORDER for Summary Judgment (DKC-97-1533) and ruling under the doctrine of res judicata (DKC-98-4190). However, the issue of law for the Court's findings are: The newly discovered evidence (Federal Court Transcripts and AFLSA/JACL letter) is material facts that was not known when the Court affirmed no injustice data exists in DKC-97-1533 or when the Court barred DKC-98-4190 under the doctrine of res judicata. The civil record before Judge Wiese (Federal transcripts) 98-930C affirm the issue of law and shows Ms. Edwards did not know the 1986 x-ray film were not before the Board; or that, the Board contrary to law used language that lead to the assumption: The 1986 x-ray film are available for review. Defendants assert in the Addendum To Record of Proceedings before United States District Court of Maryland that there are no issues in dispute for the finding of fact based on the lateral x-ray film taken on the same date as the PA view. Thus, Ms. Edwards lawful correction request was denied in 1994 based on timeliness (contrary to Federal Law) and in 1997 based on the language used (that's contrary to Federal Law for the finding of fact). The civil record affirms Ms. Edwards filed DKC-98-4190 for concurrent jurisdiction based on Defendant's assertions before United States District Court of Maryland. Facts before the Court: Defendant's destroyed the 1994 radiology film the same year Defendant's denied correction by importing a reasonableness standard into the date Ms. Edwards discovered Major Whigham's 1986 omission. The newly discovered evidence shows the Court (hearing 98-930C) includes Plaintiff's request for concurrent jurisdiction (DKC-98-4190) to affirm the facts discovered (Federal Court Transcripts and AFLSA/JACL letter) are also before United States District Court of

Maryland. DKC-98-4190 shows United States District Court of Maryland barred the finding of fact in 98-930C, 2 February 1999. DKC-98-4190 also shows the issue of law is: The Board contrary to law used language that lead to the assumption that the Board reviewed the 1986 radiology film in 1997 based on facts in admission showing Ms. Edwards requested correction of the remanded civil complaint.

The civil record for DKC-98-4190 dated 24 December 1999 shows Plaintiff moved (S November 1999) within statute (within one year) after receiving new evidence, 24 February 1999 for the finding of fact for the instant civil complaint (DKC-98-4190). After sending MOTION to affirm Federal violations, United States District Court Of Maryland's Memorandum ORDER state: While the judgment in 98-4190 was entered less than one year ago, on February 2, 1999 a motion must be filed within a reasonable time, but not later than one year. United States District Court of Maryland filed the ORDER of res judicata 2 February 1999. Plaintiff believes the Court erred when denying the MOTION filed nine-months after receiving the new evidence, to include filing within statute based on the date United States District Court filed the ORDER for res judicata (2 February 1999). AFLSA/JACL letter filed, as a matter of law shows Plaintiff received new material facts for each correction denial on 24 February 1999. Ms. Edwards moved to reopen DKC-98-4190 and to rescind United States District Court ORDER under the doctrine of res judicata 5 November

1999 after receiving evidence to show Defendant's contrary to Federal Law denied correction of Major Whigham's 1986 radiology record omission.

Plaintiff's MOTION is for the inclusion of the new evidence in civil complaint DKC-98-4190 to affirm Federal violations for each correction denial in civil complaint DKC-97-1S33.

The discoverable facts for Defendant's assertions at entry 17 (Addendum To Record Of Proceedings) before United States District Court of Maryland and United States Court of Federal Claims shows: The Board assert before United States District Court Of Maryland the remanded civil complaint was reviewed, to find, no injustice data exists for each correction denial (1994 and 1997). The Board assert pursuant to Federal Law: **"There are No errors or injustice data"** for the finding of fact/material evidence based on Ms. Edwards request for correction of Major Whigham's omission in 1994 and 1997. DKC-97-1533 affirms United States District Court of Maryland upheld Defendant's 1994 and 1997 correction denials, based on Defendant's asserting the remanded civil complaint was thoroughly reviewed; to find, no error or injustice data exists, therefore Plaintiff's correction request and claims for monetary relief pursuant to Federal Law are denied.

The enclosed ruling by United States District Court of Maryland issued 12 November 1999 shows this Court is also claiming the newly discovered evidence, Plaintiff is presenting as a result of a Federal Court hearing under statute before Judge Wiese: Allegedly shows evidence not available for use in the previous civil complaints. The United States District Court of Maryland's findings for DKC-95-3115, DKC-97-1533 and DKC-98-4190 shows Plaintiff did not know the 1986 x-ray film were destroyed in 1994. Neither did Plaintiff know the Board used language that led to the assumption that the 1986 radiology film are not available for review. Plaintiff requested correction of the 1986 PA x-ray report. However, Defendants assert the lateral x-ray film affirms Major Whigham did not error with the finding of fact under Federal law being: Major Whigham omitted from the written medical record, Doctor Freedman's medical facts for Malcolm Grows 1986 radiology report for the late Mr. Edwards. The civil record DKC-97-1533 affirmed summary judgment is appropriate because there are no issues in dispute. With the issue under Federal Law being Defendants destroyed the 1986 lateral chest-ray film prior to the medical record being corrected, to affirm the corrected record shows Major Whigham's omission was evaluated. DKC-97-1533 shows Defendants assert "No error or injustice data exists". The civil record shows Defendants state: "To the contrary we do not find it unusual that Malcolm Grow Medical Center did not note the presence of nodular densities, since the x-ray film (lateral view) did not reveal nodular densities". Ms. Edwards discovers in 1998, upon filing the instant civil complaint (DKC-98-4190) and 98-930C the 1994 x-ray film Defendants assert for the remanded record were destroyed in 1994. Also Defendant's affirmed in DKC-97-1533 that the uncorrected omission does not create an injustice that Plaintiff should receive merit for. DKC-97-1533 shows United States District Court of Maryland affirmed Defendant's finding for summary judgment. The civil record also shows Plaintiff filed the instant civil complaint DKC98-4190 that United States District Court of Maryland barred under the doctrine of res judicata. The civil record also shows Plaintiff moved to have the order of res judicata rescinded. U.S. District Court ruled Judgment in DKC-98-4190 was entered 2 February 1999. The civil record shows Plaintiff discovered the new evidence 24 February 1999; however U.S. District Court Of Maryland is claiming, it is now to late to enter the newly discovered evidence, 5 November 1999 on the civil record for Federal violations in DKC-98-4190. The civil record DKC-98-4190 affirms Ms. Edwards filed this instant complaint pursuant to Federal Law under U.S.C. 28 section 1346.

AFLSA/JACL letter shows the issue of law for the finding of fact in DKC-98-4190. Defendants assert before the Honorable Judge Wiese, that the BCMR in 1997 reviewed the 1986 lateral x-ray film for determination under Federal Law that Major Whigham did not error. However, AFLSA/JACL letter shows: Both the 1986 PA x-ray film and the 1986 lateral x-ray film were destroyed before United States District Court of Maryland remanded Plaintiff's civil complaint for further proceedings.

The civil record affirms Ms. Edwards filed civil complaint DKC-98-4190 and that United States District Court of Maryland ruled to close and bar this case with Ms. Edwards requesting concurrent jurisdiction pursuant to U.S.C section 1346 for the finding of fact based on admissions by Defendant's. The civil record shows Ms. Edwards moved to have United States District Court rescind/reopen DKC-98-4190. The enclosed Memorandum and ORDER from United States District Court of Maryland issued 12 November 1999 affirms US District Court is consistently ruling against Plaintiff even with newly discovered material facts issued as a result of hearing under statute before United States Federal Court Judge.

The issue of law before the United States Court of Appeals for the Fourth Circuit is United States District Court of Maryland is refusing to accept the newly discovered evidence and is refusing to reopen/rescind its ORDER for DKC-98-4190. Enclosed is a check for one hundred and fifty dollars ($150.00) for the submission of Plaintiff's claim to the U.S. Court of Appeals. Ms. Edwards is sending this filing and attachments as a curiosity copy to United States Court of Appeals for the Fourth Circuit.

Sincerely,

/s/

Myra R. Edwards
Pro Se Representative
1120 Windemere Court
Fort Washington, MD 20744
Daytime # 703-806-3425

Certification of Service

I certify that on 19 November 1999 this REQUEST and all attachments are being sent to United States District Court of Maryland for filing before United States Court Of Appeals For the Fourth Circuit. Ms. Edwards is also sending this notice to all addressees shown below by first class mail postage paid by Myra R. Edwards.

/s/

Myra R. Edwards

Honorable Paul Sarbanes
United States Senator
Tower 1, Suite 1010
100 S. Charles Street
Baltimore, MD 21201-2700

Department of the Air Force
Headquarters Air Force
Military Personnel Center
Randolph Air Force Base, TX, 78150-6001

Department of the Air Force
AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, MD 20762-7002

Department of the Air Force
Legal office
Malcolm Grow USAF Medical Center
Andrews AFB, MD 20331-5300

Lynne A. Battaglia,
United States Attorney
ATTN: Larry Adams,
Assistant United States Attorney
6625 United States Courthouse
101 West Lombard Street
Baltimore, MD 21201

Honorable Janet Reno,
Attorney General
Department of Justice
10th and Constitution Avenues, NW
Washington, DC 20530

Clerk,
U.S. District Court
For The District Of Maryland
6500 Cherrywood Lane
Greenbelt, MD 20770

Clerk,
United States Court of Appeals
For the Fourth Circuit
U.S. Courthouse Annex
5th Floor
1100 East Main Street
Richmond, VA 23219

Department of the Air Force
AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, MD 20762-7002

Department of the Air Force
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Lynne A. Battaglia,
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ATTN: Larry Adams,
Assistant United States Attorney
6625 United States Courthouse
101 West Lombard Street
Baltimore, MD 21201

Honorable Janet Reno,
Attorney General
Department of Justice
10th and Constitution Avenues, NW
Washington, DC 20530

Clerk,
U.S. District Court
For The District Of Maryland
6500 Cherrywood Lane
Greenbelt, MD 20770

Clerk,
United States Court of Appeals
For the Fourth Circuit
U.S. Courthouse Annex
5th Floor
1100 East Main Street
Richmond, VA 23219

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT
OF MARYLAND

Myra R. Edwards Plaintiff	Civil Case No. DKC-97-1533

vs.

DEPARTMENT OF THE AIR FORCE
AFBCMR
&
MALCOLM GROW USAF MEDICAL CENTER
Defendants

CERTIFIED REQUEST - RETURN RECEIPT REQUESTED ARTICLE NUMBER P 176 864 462

NOTICE TO U.S. DISTRICT COURT AND ALL INTERESTED PARTIES THAT PLAINTIFF SHALL REQUEST ADMISSIONS BEFORE UNITED STATES COURT OF FEDERAL CLAIMS FOR CONCURRENT JURISDICTION OF MONETARY RELIEF

COMES NOW, Pro Se Representative, Myra R. Edwards to notify all interested parties by certified mail that plaintiff shall request concurrent jurisdiction by submitting the entitled claim to the United States Court Of Federal Claims. The entitled claim is currently before the U.S. District Court of Maryland pending Judgment of MOTIONS for SUMMARY JUDGMENT. The Plaintiff affirms the claim against the United States is founded upon the Constitution, federal statutes, and executive regulations. This certified notice is being sent to notify all interested parties that a claim for monetary redress will be filed in the U.S. Court of Federal Claims for 1.5M dollars.

The claim before the U.S. Court of Federal Claims shall be for the omission of medical facts, not apart of, Malcolm Grows system of records when the Plaintiffs' claim for a service connected death was adjudicated by the Department of Veterans Affairs, June 18, 1991, see entry 057-078. For compensation based on the Plaintiffs request for medical reviews from various doctors who relied on the facts in Malcolm Grows medical records to be free from material omissions, so that, the requested doctor's findings before the Department of Veterans Affairs would be fair, just and accurately provide all of the medical facts for the 1986 issue. For compensation based on medical facts for the late, Mr. Edwards who came to Malcolm Grow 10 February 1986 and later died without knowing, the defendants omitted material medical facts in the health records for this visit. For AFBCMR's denial decision, that shows, the United States knew Doctor Whigham, radiologist at Malcolm Grow omitted or failed to comment on nodular densities for the PA radiology view in 1986, to show under law that Malcolm

Grow evaluated a abnormality in 1986 based on AFBCMR finding for the lateral view taken on the same date as the PA view. For AFBCMR's refusal to correct the health record under the provisions of Title 10 section 1552, see entry 041-049 on the civil record. And for facts showing plaintiff requested AFBCMR to reconsider its denial decision before she brought claim to the U.S. District Court Of Maryland. Request addressees under law send their response, for or against, admissions before the U.S. Court of Federal Claims, to the plaintiff, after receipt of this certified request.

Again, this certified notice is being sent to notify all interested parties that this entitled claim will be submitted to the U.S. Court of Federal Claims for compensation/redress.

A. Statement of Fact.

Plaintiff Myra R. Edwards is the widow of Hartwell E. Edwards, a former member of the Air Force. In May 1982, MSgt Edwards retired from active duty. October 28, 1992 under Title 10 of the U. S. Code, Section 1552, the plaintiff asked Department Of The Air Force, Air Force Board for Correction Of Military Records (AFBCMR) to correct the 1986 radiology report from Malcolm Grow USAF Medical Center, see entry 041-049 on the civil record. October 11, 1994, AFBCMR denied Plaintiff's request for a medical records correction, see enclosed letter from Department of the Air Force to The Honorable Paul Sarbanes, dated October 14, 1994 and letter from the Department Of Air Force, dated 11 October 1994. Mr. Edwards died October 11, 1988 from Large Cell Carcinoma of the lung; see entry 051 on the civil record.

B. Medical Issues.

February 10, 1986, retired MSgt Edwards went to Malcolm Grow Medical Center because of cough and bronchitis, including one episode of coughing up blood, see enclosed health record from Malcolm Grow Medical Center - Chronological Record Of Medical Care, dated February 10, 1986.

Doctor Carl Schoenberger, Pulmonologist, reviewed Malcolm Grow Medical Center's records for the deceased veteran in 1990, see entry 08.1-083. Doctor Schoenberger medical report supports medical facts revealed by reading the duplicate 1986 radiology film. Doctor Freedman's 16 April 1990 review of the 1986 duplicate radiology film was given to the Plaintiff, in a written report, see entry 087-88. Doctor Freedman's medical report for the 1986 issue shows, Malcolm Grow omitted material medical facts revealed on the original chest x-ray film when Mr. Edwards received treatment February 10, 1986 for an acute illness, see entry 087-088 and 086. The Chronological Record gives medical facts for Mr. Edwards' medical visit to Malcolm Grow on 10 February 1986. Please note the enclosed Chronological Record shows Mr. Edwards' states he had stopped smoking.

The medical facts from Doctors Schoenberger and Freedman shows Malcolm Grows February 16, 1986 Chronological Record and radiology report omitted material medical facts that were later revealed by reading duplicate copies of the 1986 radiology film.

Facts for the 1986 omission are:

1. The Plaintiff relied on Malcolm Grows records to be free from omissions for medical facts that relate to the 1986 issue;
2. The doctors who reviewed the medical records agreed with Malcolm Grows finding, based on the medical facts currently in Malcolm Grows medical records for the 1986 issue,
3. Doctors Ruxer, Freedman, and Schoenberger gave medical facts after reviewing Malcolm Grows system of records with omissions for the 1986 issue, showing their finding was used by the Department of Veterans Affairs to deny a

Congressional right.

Doctor Freedman's medical report shows the following material facts were omitted in 1986 when Mr. Edwards came to Malcolm Grow because he was coughing up blood.

a. Bi-apical plural thickening;

b. Two I cm nodular densities projected over both lower lung fields are consistent with nipple shadows, although films with nipple markers would be valuable in confirming this;

c. There is a diffuse interstitial pattern, which is most prominent at the bases, and is consistent with mild interstitial fibrosis.

The [sic] February 10, 1986 radiology report from Malcolm Grow reads: CHEST; Standard radiographs of the chest in the frontal and lateral projections shows no abnormality of the heart, lungs, mediastinum or bony thorax. IMPRESSION NORMAL CHEST, see entry 086.

C. Admissions.

Admissions by AFBCMR for the [sic] 1986 radiology report are on the civil record before the U.S. District Court

Of Maryland. Admissions by the defendants was given in "THE ADDENDUM TO RECORD OF PROCEEDINGS AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS", dated March 31, 1997 and "MOTIONS TO DISMISS OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT", see enclosures.

The AFBCMR states in Addendum To Record, entry 2 on page 3, paragraph b, **"We do not find it unusual that Malcolm Grow Medical Center did not note the presence of nodular densities/nipple shadows on the PA view of the 1986 x-ray film since the x-ray film taken on the same date from the lateral view did not reveal the nodular densities/nipple shadows"**. The Plaintiff is before the Court because of AFBCMR's unjustifiable refusal to correct the omission for the 1986 issue based on Doctor Freedman's 1990 finding; and for facts on the civil record that shows the defendants admits Doctor Whigham chose not to comment/omitted material medical facts used to adjudicate Plaintiffs case before the Department Of Veterans Affairs.

The defendants MOTION TO DISMISS OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT states on page

7, beginning with the last line, "The fact that Major Whigham chose not to include a comment about nipple shadows does not make the records for the 1986 issue in error or inaccurate".

On page 8, first paragraph of defendants MOTION TO DISMISS, they assert, the information on record from Doctors Ruxer, Freedman and Schoenberger does not show Major Whigham's report is inaccurate, or in error;" however facts for defendants' admissions before the Courts shows Major Whigham **"omitted or failed to comment on material facts in 1986 that were later used to formulate medical facts before the Department of Veterans Affairs".** See Doctor Ruxer's finding, entry 079-080 for material medical facts given to the Department of Veteran's Affairs. Admissions on the civil record from Doctor Ruxer on page 2, paragraph 2, entry 079-080, to Ms. Edwards for medical facts to be presented to the Department Of Veteran's Affairs is. ..."There is in the clinical record a chest x-ray report dated 10 February 1986 which reads, standard radiographs of the chest in the frontal and lateral projection showed no abnormality of the heart, lungs, mediastinum, or bony thorax. Impression: Normal chest." "Thus, we find in the record an interval film which reflects **no abnormalities between the 1978 and 1981 question and the later findings** (meaning 1987 and 1988 when Malcolm Grow discovered the lung cancer)." Doctor Ruxer refers to the 1986 radiology report as a record of the interval film, which reflects **no abnormalities,** without mentioning whether or not nodular densities are shown on the original 1986 radiology film. Doctor Freedman's radiology report shows the question before this Court is not whether or not, the nodular densities for the 1986 issue are or are not a abnormality; the medical facts for this finding is: Malcolm Grow omitted or chose not to report a finding for nodular densities when Mr. Edwards came to the hospital in February 1986 because of bronchitis and coughing up blood.

Admissions from defendants' shows:

(a) They are not denying Major Whigham omitted a finding for "Two I cm nodular densities/nipple shadows on the original 1986 radiology report;

(b) They are non-responsive to the issues for the 1986 radiology report, or they erred in **Statement Of Facts,** for the MOTION TO DISMISS, on page 2, paragraph 2, when they state; "MSgt Edwards was treated in March 1995 for bronchitis, aggravated by his 30 years of smoking and mild pleuritis.

The Chronological Record from Malcolm Grow dated 10 February 1986 gives the date when the late Mr. Edwards, came in for bronchitis and hemoptysis and also shows Mr. Edwards states, he had stopped smoking. Doctor Schoenberger medical report shows Mr. Edwards came to Malcolm Grow in February 1986 because of bronchitis and coughing up blood, see entry 081-082.

The Plaintiff finds AFBCMR is also trying to mislead the court about when the Plaintiff discovered Malcolm Grow omitted material facts for the 1986 issue. On page 3, middle of the page in MOTION TO DISMISS, the defendants state: **"In your case, the Board found no error or injustice warranting correction of your late husbands records but elected to decide the case on timeliness". (Emphasis added).**

Facts before this Court are: Under statute, the Plaintiff has 3-years to request a medical records correction. The case on Appeal before the Board Of Veterans Appeals, dated June 18, 1991 clearly shows, Doctor Freedman's report is not included. Thus, the Plaintiff asked the Veterans Administration to reconsider its denial based on Doctor Freedman's 1990 finding for the omission of medical facts not included in Malcolm Grows system of records, see enclosed ORDER from FUDGE NEBEKER, dated 6 November 1992. The Court for Veterans Affairs ruled, Doctor Freedman's medical finding in 1990 fail to show service connection, while reports interpreting the service x-ray do not show a carcinoma. The Plaintiff is requesting entry before the U.S. Court Of Federal Claims for a monetary ruling under Title 10 section 1552 for AFBCMR's denial decision that shows Malcolm Grows 1986 radiology report has never been corrected; and for monetary relief based on the omission of medical facts for the 1986 issue.

Enclosed are the Plaintiffs letters to AFBCMR dated 20 July 1994, stating the reason for requesting a medical records correction. The civil record shows none of the doctors who reviewed t he medical records for the 1986 issue state: Malcolm Grows 1986 radiology report for the original 1986 film revealed a abnormality, but x-ray film taken on the same date for the lateral view did not reveal the nodular densities/nipple shadows, see entry 057-078, and entries 079-080, 081-082 and 087-88.

Facts For Medical Records Correction:

(1) On October 26, 1992, Myra R. Edwards filed a motion for reconsideration or review of the United States Court Of Veterans Appeals June 18, 1991 denial decision based on Doctor Freedman's 1990 medical report by stating Doctor Freedman's medical report had not been considered by the Board Of Veterans' Appeals, see enclosed ORDER from JUDGE NEBEKER;

(2) The Plaintiff by application under law on 28 October 1992 (entry 041-049) requested a Military Records Correction for the material fact, to show discovery of the 1986 omission that was given April 16, 1990, after Mr. Edwards' death;

(3) The Plaintiff asked AFBCMR on 21 October 1994 to

reconsider the application requesting a military records correction, see response from AFBCMR dated November 22, 1994 see enclosure;

(4) Plaintiff's FOIA dated 11 May 1995 to 11 MSS/IMS (FOIA) see enclosure,

shows the Plaintiff said, she had requested a medical records correction, and that she was asking for a copy of the records that shows, knowledge of the omission prior to receiving Dr. Freedman's radiology report;

(5) The enclosed certified letter to AFBCMR, dated 24 May 1995 shows in paragraph 2, on page 1, that Plaintiff states: AFBCMR is continuing to deny my rights for receiving the requested documents by making the following false statement about this request: ... Last line, I state, Under Federal Law, government agencies and/or Review Board's who decide cases in a capricious manner can be taken to Federal Court for judgment.

(6) The enclosed certified notice was sent 4 August 1995 to let AFBCMR, and Department Of the Air Force know of the pending law suit;

(7) The Plaintiff affirms, "If she had not requested copies of

radiology film in 1990; the 1986 issue would have never been discovered;

(8) The Plaintiff affirms she brought the omission to the attention of the Department of Veterans Affairs within statute, and that she requested a medical records correction through AFBCMR within statute.

D. Arguable Issue.

The defendants states on page 2, paragraph 4, in the MOTION TO DISMISS ..."All opined that the projections on the earlier x-rays were nipple shadows, (TR. 79-80, 81-83, 87). Thus, if the Court finds the defendants omitted material facts for the 1986 issue, for what was opined before the Department Of Veterans Affairs then what was opined is moot.

E. **Plaintiffs Claim.**

In 1989, the Plaintiff asked for a medical records review from Malcolm Grow USAF Medical Center. Doctor Ruxer reviewed the late Mr. Edwards radiology records for facts being adjudicated before the Department Of Veterans Affair for a service connected death. Doctor Ruxer, chief

Hematology-Oncology Services at Malcolm Grow provided the requested review on 27 September 1989, see entry 079-080.

Doctor Ruxer's medical report for the 1986 issue on page 2, paragraph 2 states ..."There is in the clinical record a chest x-ray report dated 10 February 1986 which reads, **standard radiographs of the chest in the frontal and lateral projection showed no abnormality of the heart, lungs, etc"**. The admissions by Doctor Ruxer for review of the 1986 radiology report from Malcolm Grow fails to support AFBCMR's admissions before the Court. Facts for Doctor Ruxer's medical review is he failed to state Malcolm Grow evaluated the densities or abnormality the defendants admits Major Whigham failed to comment on for the 1986 issue. Doctor Ruxer's medical finding also omits facts to show, even though Major Whigham chose not to include a comment about nipple shadows; his medical review shows: The lateral view taken on the same date as the PA view reveals, nodular densities found by Malcolm Grow, February 1986 to be consistent with nipple shadows. See Doctor Ruxer's entry for finding of nodular densities opined as projections for earlier x-rays without mentioning under law that Malcolm Grow found an abnormality for the 1986 issue.

The Plaintiff affirms in 1990 she requested copies of various x-rays from Malcolm Grow and that she discovered the late Mr. Edwards x-rays for 1979, 1980 and 1981 were no longer available, see ORDER before Judge NEBEKER. The Plaintiff affirm she gave the 1986 and 1988 radiology film to Doctor Matthew Freedman who provided the medical report about the 1986 issue, 16 April 1990.

The Plaintiff affirms while exhausting every avenue for a service connected death, she also made application under law for correction of Malcolm Grows original 1986 radiology report, see enclosed letter from the Honorable Sarbanes, dated 14 October 1994. This letter shows the Plaintiff requested a congressional inquiry on the status of the 28 October 1992 application for Military Records Correction, showing it took two-years to deny the application for timeliness. Also see AFBCMR's denial for reconsideration of the application for a Military Records

Correction, dated 22 November 1994, entry 03003 1. And the following enclosed letters to AFBCMR dated 11 May 1995 and 24 May 1995 for AFBCMR's refusal to release information showing the application for correction is untimely.

AFBCMR's finding as stated in the letter for reconsideration and admissions on the civil record are: "You asserted a date of discovery of April 16, 1990, which would if correct, make the application timely; however the essential facts which gave rise to the application were known by you long before the asserted date of discovery", see enclosed letter from AFBCMR for continued claims of timeliness, dated March 31, 1997. Showing this letter was issued after the U.S. District Court Of Maryland entered its MEMORANDUM OPINION and ORDER, 11 October 1996.

The U.S. District Court Of Maryland's MEMORANDUM OPINION on page 11 for case # DKC-95-3115 states, in McFarlane v. Secretary of the Air Force, 867 F. Supp. 409 (E.D. Va. 1994), that Judge Ellis held that it was error for the AFBCMR to import a reasonableness standard into the date of discovery of the error or injustice for purposes of determining whether an application is timely filed.

Facts before this Court are Ms. Edwards' case was remanded for further proceeding 11 October 1996; see enclosed ORDER from U.S. District Court of Maryland. The defendants state in MOTION TO DISMISS on page 3, last paragraph ... U.S. District Court ruled that it was error for the AFBCMR to import a reasonableness standard in to the date of discovery of the error or injustice for purposes of determining whether an application is timely filed. Top of page 4 states, ...The AFBCMR again considered Mrs. Edwards claims. On March 31, 1997, the

AFBCMR found that

> Based on the evidence before us, we find no basis to conclude that a chronic condition existed prior to (MSgt Edwards') retirement from the Air Force in 1982. Therefore, we are not persuaded that the applicant's husband was unfit at the time of his retirement and do not believe that he should have been retired by reason of physical disability. Therefore, in absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

F. Non-Responsive Finding and Facts For Judgment.

The issue before the Court is not whether or not, a **chronic condition existed prior to (MSgt Edwards) retirement.** The issue for Judgment is whether or not the defendants omitted material facts for the 1986 radiology report from Malcolm Grow Medical Center in 1986. **Other**

issues for Judgment are:

(a)Whether or not the defendants violated the Plaintiffs constitutional rights when they refused to correct the Military Records in accordance to law;

(b) Whether or not defendants' refusal to correct the 1986 radiology report causes the Plaintiff and her two sons harm based on facts for the omission;

(c) Whether or not under law, the medical evaluation can be relied upon, knowing Malcolm Grow omitted material facts that were adjudicated by The Department Of Veterans Affairs;

(d) Whether or not under law the omission based on reviews from unbiased doctors who relied on Malcolm Grows relative facts for the 1986 issue, represents an injustice based on Major Whigham failure to comment on nodulars in 1986;

(e) Whether or not the defendants arbitrarily and capriciously violated laws governing the correction; based on facts in admission that shows Major Whigham chose not to include a comment about nipple shadows in 1986;

(f) Whether or not under law, the defendants violated the fights of Mr. Edwards based on the omission of facts, showing he came to Malcolm Grow because of an acute illness (bronchitis and coughing up blood).

The Plaintiff affirms she repeatedly asked AFBCMR to release information to show the plaintiff had knowledge of the essential facts based on the denial decision. However, as shown on the enclosed U.S. District Court Of Maryland's ORDER and MEMORANDUM OPINION, the plaintiff was denied the fight to receive data that shows knowledge of the essential facts, also see enclosed letter from Department Of The Air Force, dated 14 December 1995. The enclosed letter from Department Of Air Force, dated 14 December 1995 shows AFBCMR received the Plaintiffs repeated request for data based on the denial decision. The enclosed letter dated, 4 August 1995, shows the plaintiff sent certified notice to AFBCMR for the civil claim, see enclosed PLAINTIFFS GROUNDS FOR SUIT DKC-95-3115 AND PLAINTIFFS RESPONSE TO ADDENDUM TO RECORD OF PROCEEDINGS (AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS) BASED ON U.S. COURT'S ORDER REMANDING CORRECTION OF MILITARY RECORD UNDER TITLE 10 OF U.S. CODE.

G. **Relief Sought.**

Plaintiff is asking the Honorable Court for punitive damage and JUDGMENT for defendants' violations of constitutional rights protected by Federal Laws when they refused to correct the 1986 radiology report from Malcolm

Grow USAF Medical Center. Request the Honorable Court enter JUDGMENT for monetary relief (punitive damage) for years of aggravation, stress and omission of material facts for the 1986 issue, based on the request for a medical records correction; showing the defendants knew, Major Whigham failed to comment/omitted material medical facts for the 1986 issue that was adjudicated by the Department Of Veterans Affairs. And JUDGMENT showing the defendants arbitrarily refused to correct the omission found in 1990 (punitive damage), even after, the Plaintiff brought the omission to the attention of AFBCMR October 28, 1992. And finally, JUDGMENT for monetary relief (punitive and negligent damage) based on the omission of medical facts for Mr. Edwards' visit to Malcolm Grow on 10 February 1986.

/s/ ______________ ____________
(Signature) (Date)

CERTIFICATE OF SERVICE

I certify that on 18 September 1998, that all interested parties (named below) are being notified by certified mail of this request for entry before the United States Court Of Federal Claims.

/s/ ________________
(Signature)

Lynne A. Battaglia,
United States Attorney
ATTN: Kaye Allison,
Assistant United States Attorney
Certified Request - Return Receipt Requested
Article number P 176 864 459
604 United States Courthouse
IO 1 West Lombard Street
Baltimore, Maryland 21201

Honorable Janet Reno,
Attorney General
Department Of Justice
Certified Request - Return Receipt Requested
Article number P 400 792 850
10th and Constitution Avenues, N.W.
Washington, DC 20530

AFBCMR
Certified Request - Return Receipt Requested
Article number P 176 864 464
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, NM 20762-7002

Department Of The Air Force
Legal Office
Certified Request - Return Receipt Requested
Article number P 176 864 463
Malcolm Grow USAF Medical Center (MAC)
Andrews AFB, MD 20331-5300

Clerk,
U.S. District Court For The District Of Maryland
Certified Request - Return Receipt Requested
Article number P 176 864 462
6500 Cherrywood Lane
Greenbelt, NM 20770

Pro Se Representative
Myra R. Edwards
1120 Windemere Court
Fort Washington, NM 20744
703-806-3425

DEPARTMENT OF THE AIR FORCE
11TH Wing

14 Dec 95

11 MSS/IMS (FOIA)
1000 Air Force Pentagon
Washington DC 20330-1000

Ms. Myra R. Edwards
1120 Windemere Court
Fort Washington MD 20744

Dear Ms Edwards

In your initial Freedom of Information Act (FOIA) request, dated November 25, 1994, you asked the AFBCMR to "disclose all facts which show: 'The essential facts which gave rise to my application were known by Myra R. Edwards, long before the asserted date of discovery.'" In our response, dated March 28, 1995, we stated we were not required to answer questions under the FOIA, which is true. In your subsequent FOIA requests, dated April 13, 1995 and May 11, 1995, you asked for documents, which the AFBCMR relied on in answering the question you posed in your first FOIA request. We considered the second and third FOIA requests as basically asking the same question as in your first FOIA request.

Upon further consideration, we noted that there are certain documents responsive to your request and which may be released to you. We are releasing to you your husband's death certificate and your application to the AFBCMR. There are no other documents responsive to your requests. These two events were more than 4 years apart.

Should you decide to appeal this decision, you must write to the Secretary of the Air Force within 60 calendar days from the date of this letter. Include in the appeal your reasons for reconsideration and attach a copy of this letter, Address your letter to:

Secretary of the Air Force
THRU: 11 MSS/IMS (FOIA)
1000 Air Force Pentagon
Washington DC 20330-1000

If you have any questions, please feel free to contact Ms Ashton-Kelly at (703) 695-4992.

Sincerely,

/s/ ______________________
CAROLYN W. PRICE
Chief, Documentation Information & Services Section

Attachments:
1. Application
2. Death Certificate

95-0654
95-0823

DEPARTMENT OF THE AIR FORCE
11TH WING

1 0 August 2000

11 CS/SCS (FOIA)
1 000 Air Force Pentagon
Washington DC 20330-1000

Ms. Myra Edwards
1120 Windemere Court
Fort Washington MD 20744

Dear Ms. Edwards

This is our final response to your June 13, 2000, Freedom of Information Act request for that portion of your request where you requested the "Official notification to affirm destruction of the 1986 PA and lateral chest x-ray film for the late Hartwell E. Edwards. The date the 1986 x-ray film was destroyed to affirm the facts released by AFLSA/JACL for destruction in 1994."

The Air Force Judge Advocate General has provided the following information in response to your request. The Department of Justice notified you in March 1999 that the subject x-ray films were destroyed under normal procedures, and that the destruction of the x-ray films did not involve the creation of any records. They are unaware of any agency record purporting to serve as an "official notification" of the destruction.

You also seek other documents if the 1986 film have not been destroyed. Since, the films were destroyed in 1994, there are no responsive records.

If you determine this "no records" response as an adverse action, you may appeal it to the Secretary of the Air Force within 60 calendar days from the date of this letter. Include in the appeal your reasons for reconsideration, and attach a copy of this letter. Address your letter as follows:

Secretary of the Air Force
THRU: 11 CS/SCS (FOIA)
1000 Air Force Pentagon
Washington DC 20330-1000

If you have any questions, please contact the undersigned at (703) 6967268 and refer to case #00-1200.

Sincerely

/s/ ____________________
ANGELA ASHTON-KELLY
Freedom of Information Manager

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

10 Dec 2001

MYRA R. EDWARDS
v. CIVIL ACTION NO. DKC-95-3115
DEPARTMENT OF THE AIR FORCE
AFBCMR

MYRA R. EDWARDS
v. CIVIL ACTION NO. DKC-97-1533
DEPARTMENT OF THE AIR FORCE
AFBCMR
MALCOLM GROW USAF MEDICAL CENTER:

MYRA R. EDWARDS
v. CIVIL ACTION NO. DKC-98-4190
DEPARTMENT OF THE AIR FORCE
AFBCMR
MALCOLM GROW USAF MEDICAL CENTER:

..000..

ORDER

On October 16, 1995, Ms. Edwards filed suit under the Freedom of Information Act ("FOIA") seeking: (1) to compel a response to an FOIA request before the Air Force Board for the Correction of Military Records ("AFBCMR"); (2) to overturn the AFBCMR decision denying the amendment of Dr. Whigham's 1986 report; and (3) damages arising out of the AFBCMR's actions or inactions. *See Edwards v. Dep't of the Air Force,* et al., Civil Action No. DKC-95-3115. On October 15, 1996, this Court dismissed the FOIA and damage claims, but remanded to the AFBCMR that aspect of the complaint, which sought review of the previous decision to refuse an amendment to Master Sergeant Edward's (plaintiff's husband) medical record. On February 6, 1997, the United States Court of Appeals affirmed that judgment.

The AFBCMR subsequently reviewed its prior decision and held that Ms. Edwards, evidence did not warrant a change to her husband's medical records. With the entry of that AFBCMR decision, plaintiff filed a new complaint in this Court seeking correction of her husband, s military records and damages allegedly resulting from the Air Force's refusal to correct her husband's records and its refusal to respond to the FOIA request. *See Edwards v. Dep't of* the *Air Force,* et al., Civil Action No. DKC-97-1533. In a September 22, 1998 Memorandum Opinion, the undersigned judge concluded that the AFBCMR's finding[1] was neither arbitrary nor capricious and was well supported by more than substantial evidence. Consequently, the Motion for Summary Judgment filed by defendants Department of the Air Force (AFBCMR) and Malcolm Grow USAF Medical Center was granted and judgment was entered in their favor. Plaintiff did not take an appeal of that decision.

On December 28, 1998, plaintiff filed a complaint for damages pursuant to 28 U.S.C. § 1346, "for a decision on whether or not the United States unjustifiably denied correction" of her husband's medical record, focusing in particular on certain entries made by a Major (Dr.] Whigham at the Malcolm Grow Air Force Medical Center in 1986. *See Edwards v. Dep't of the Air Force,* et al., Civil Action No. DKC-98-4190.) The complaint named as defendants the Department of the Air Force (AFBCMR) and the Malcolm Grow USAF Medical Center and the specific claims alleged and relief sought by Ms. Edwards were the same as those set out in *Edwards* v. Dep't *of* the *Air Force,* et al., Civil Action No. DKC-97-1533. On January 29, 1999, the case was dismissed under the doctrine of *res* judicata. The Fourth Circuit affirmed that decision on May 19, 1999. Subsequent motions to reopen the case were denied and those decisions were affirmed on appeal.

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[1] The AFBCMR held that Dr. Whigham's 1986 report regarding Master Sergeant Edward's x-ray was accurate and required no amendment.

On December 5, 2001, the plaintiff filed miscellaneous motions in each of the three above-captioned cases asking that all records in the cases be released to the United States Court of Federal Claims. Ms. Edwards seemingly claims that the records will be submitted in her case before the Court of Federal Claims and used to demonstrate that federal violations occurred in regard to destroyed medical records and errors entered medical records.

The motions shall be denied. First, personnel from the Clerk of the United States Court of Federal Claims affirm that Ms. Edwards, case was dismissed by Judge John P. Wiese on February 19, 1999 for lack of jurisdiction and remains closed. Second, the normal practice is, if records from a case file in this Court are required by another federal court, that court makes a request directly to this ,Court for the records. In the absence of such a request from the United States Court of Federal Claims, this Court will not send copies of the record in Ms. Edwards' three cases.[2]

Accordingly, IT IS this 7th day of December 2001, by this Court hereby ORDERED that:

1. Plaintiff's motions for release of records filed in the above-captioned cases ARE hereby DENIED; and

2. The Clerk of the Court MAIL a copy of this Order to the plaintiff and to Assistant United States Attorney Larry Adams, 6625 United States Courthouse, 101 W. Lombard Street, Baltimore, Maryland 21201.

/s/ ____________
Deborah K. Chasanow
United States District Judge

---

[2] Should plaintiff need photocopies from her court files, she is of course free to file the appropriate copy work requests with the Clerk of the Court.

1120 Windemere Court
Fort Washington, MD 20744
16 October 1998

TO: Malcolm Grow USAF Medical Center
Legal Office
Certified Request Article # Z 571 694 601
Andrews Air Force Base, MD 20443

and

Department of the Air Force
AFBCMR
Certified Request Article # Z 571 694 602
1535 Command Drive
EE Wing, 3rd Floor
Andrews Air Force Base, MD 20762-7002

CERTIFIED REQUEST - RETURN RECEIPT REQUESTED
SEE ABOVE ADDRESSEES

OFFICIAL NOTICE OF RIGHT TO SUE UNITED STATES FOR VIOLATING FEDERAL STATUTES PROTECTED BY LAWS GOVERNING THE CORRECTION OF MILITARY RECORDS

To the above addressees,

This certified notice is being sent to notify all interested parties that a claim in the U.S. District Court of Maryland will be submitted against the United States and directing agencies for violating Title 10 Armed Forces Subtitle A Military Law, Section 1552(4) (b) which states: No correction may be made under subsection (a) (1) unless the claimant or his heir or legal representative files a request for the correction within three years after he discovers the error or injustice. However, a board established under subsection (a) (1) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice. Myra R. Edwards state, she filed the request for correction of Malcolm Grow's original 1986 radiology report within statute on 28 October 1992 and that the United States unjustifiably denied the request on 11 October 1994 as untimely while knowing Maj. Whigham, radiologist at Malcolm Grow USAF Medical Center, chose in 1986 to omit medical facts that were discovered by Ms. Edwards 16 April 1990.

Section c of Title 10 states: The Secretary concerned for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be. If the claimant is dead, the money will be paid, upon demand, to his legal representative.

Ms. Edwards states, she did not know about the omission and possible breach of duty by a physician until 1990 and 1997 respectively. In Court papers the United States state: The fact that this doctor chose not to include a comment about nipple shadows does not make the record in error or inaccurate. Facts for the injustice are the United States and directing agencies knew of the request for a records correction based on medical facts being adjudicated by the Department of Veterans Affairs. And the United States and directing agencies also knew of the need to correct Malcolm Grow's Medical records based on what the Government knew to be true about Maj. Whigham's omission of medical facts. By law the United States is under duty to correct the error, regardless of the United States finding that Major. Whigham chose not to comment about nipple shadows in 1986. By law, the United States was required to rectify Maj. Whigham's medical breach after Ms. Edwards discovered the omission and requested correction under Title 10 section 1552.

To complicate facts for the omission, the United States claimed, Ms. Edwards had knowledge of the 1986 error/injustice prior to receiving Doctor Freedman's medical report, dated 16 April 1990. Thus, Ms. Edwards filed suit against the United States for failure to disclose/release documents in support of knowledge of the error prior to receiving Doctor Freedman's medical report. And for AFBCMR's refusal to release records that show the application for correction was not timely filed.

Ms. Edwards requested correction after receiving duplicate copies of the 1986 and 1988 radiology film and having the film read by a trained radiologist at Georgetown University Hospital. Prior to receiving Doctor Freedman's 1990 medical finding, Doctor Ruxer, Chief of Hematology-Oncology at Malcolm Grow Medical Center, shows in his letter dated 27 September 1989 that he reviewed the late Mr. Edwards' medical records. The enclosed letter from Doctor Ruxer in 1989 omitted the admissions of the United States to show, Maj. Whigham in 1986 chose/failed to comment on nodular densities revealed by reading the original 1986 film. Even though it is now known through civil court proceedings in 1997 that Major Whigham chose to omit medical facts under review by the Department of Veterans Affairs in 1992-1994.

Facts under law for correction are, the request was filed within statute, based on Doctor Freedman's 1990 medical finding. Doctor Freedman's finding has never been refuted or denied by the United States or directing agencies, but was used by them in court papers to show doctors reviewing Malcolm Grow's medical records opined nodular densities as being consistent with nipple shadows while knowing Maj. Whigham did not give an opinion on the 1986 issue. Issues under law based on Doctor Ruxer medical report for medical facts from 1979 through 1981 shows Malcolm Grow during this time period opined nodular densities for each radiology reports as being nipple shadows. However, Doctor Ruxer's medical finding also shows, Malcolm Grow under law did not state they found a abnormality for the 1986 issue or that, doctors at Malcolm Grow gave an opinion on the type of abnormality found for the 1986 issue. Facts on the civil record for correction shows the United States admits Maj. Whigham chose to omit or not comment on the material fact (1986 issue) for which under law and by statute Ms. Edwards asked be corrected.

Ms. Edwards is requesting suit under statute for the United States claim that the request for correction was untimely. And for the unlawful denial that shows the United States knew Maj. Whigham omitted medical facts that were revealed by reading the 1986 radiology film. Based on the unlawful denial for correction and facts for the omission, Ms. Edwards is seeking court ordered compensation which includes monetary relief for **adjoining case before the United States Court of Federal Claims.**

I. Statement of Facts For Correction of Military Records.

Myra R. Edwards is the widow of Hartwell E. Edwards, a former member of the Air Force, enclosed is a copy of the Letters of Administration, DD 214 and death certificate for the late Mr. Edwards.

In May 1982, MSgt Edwards retired from active duty. October 28, 1992 under Title 10 of the U.S. Code, Section 1552, Ms. Edwards by application asked the Department of the Air Force, Air Force Board for Correction of Military Records (AFBCMR) in 1992 to correct one 1986 radiology report from Malcolm Grow USAF Medical Center based on Doctor Freedman's 1990 medical finding. Doctor Freedman read duplicate copies of Malcolm Grow's 1986 and 1988 radiology film in 1990. See enclosed request for Correction of Military records and Doctor Freedman's 1990 radiology finding.

The request for correction was made 28 October 1992. Enclosed is a copy of the letter I received from Department of Air Force, dated 14 March 1990. This letter clearly states, the statute of imitation for requesting correction of military records is three years. April 16, 1990 I received the enclosed radiology report from Doctor Freedman at Georgetown University Hospital. I gave Doctor Freedman's medical report to the Department of Veterans Affairs February 14, 1991 at the scheduled hearing. 28 October 1992, I requested the medical records correction based on the enclosed **VA's**

June 18, 1991 denial decision that failed to include Doctor Freedman's 1990 medical finding for the 1986 issue. I also requested the medical records correction because the VA's denial did not include medical facts from Malcolm Grow to show the late Mr. Edwards went to Malcolm Grow 10 February 1986 because of coughing up blood and bronchitis in support of Doctor Schoenberger finding for the 1986 issue. See enclosed Board of Veterans Appeals decision, docket # 90-53-597, dated June 18, 1991 and Doctor Schoenberger report dated 5 December 1990.

The radiology finding as written by Maj. Whigham was included in the VA's June 18, 1991 denial. See page 4, paragraph 4... The VA states:

> "A chest x-ray examination at a military facility in February 1986 was interpreted as normal, **with no abnormality of the lungs**.

When my case was adjudicated by the VA, I did not know Maj. Whigham chose to omit medical facts for the 1986 issue. I knew based on Doctor Freedman's 1990 radiology finding that Malcolm Grow omitted medical facts for the 1986 radiology report. And that the **omission contradicts Malcolm Grows 1986 health record finding for the acute visit**. Major Whigham, radiologist state the chest is normal on Malcolm Grows 1986 radiology report, while choosing not to comment on nodular densities; even though the health record for this doctor's visit shows Mr. Edwards came to Malcolm Grow because of bronchitis and coughing up blood.

Doctor Freedman's medical report for the 1986 issue shows he found bi-plural thickening, and nodular densities that maybe consistent with nipple shadows. As a lay person, I fond Doctor Whigham's medical report lacks a finding for bi-plural thickening, nodular densities. And shows an omission based on the reported health problems. If you read the health report showing Mr. Edwards came to Malcolm Grow 10 February 1986 because of bronchitis and coughing up blood and you take into account Doctor Schoenberger medical findings for the 1986 issue, these facts shows something was wrong. **To include problems under law with Maj. Whigham's 1986 radiology finding.**

Although requested Malcolm Grow has never amended the original 1986 x-ray report for Maj. Whigham. Or provided medical facts to the VA to confirm facts showing: **Major Whigham chose to omit or not comment on nodular densities in 1986 for additional review of the military record with Plaintiff being denied her Primary Claim, (Service entitlements as a matter of law using Malcolm Grow's Post Treatment Medical Records).** At issue: **Doctor Freedman's medical facts should be included as part of the late MSgt Edwards amended medical record for the 1986 PA x-ray finding** to confirm medical facts for the 1986 issue, based on Ms. Edwards request for correction and claim for review by the Department of Veterans Affairs.

Malcolm Grows medical records for 10 February 1986 shows Mr. Edwards visited Malcolm Grow because of coughing up blood and bronchitis. Malcolm Grow requested x-rays for 10 February 1986 offices visit, however, the x-ray report for the 1986-office visit is askew by the limitation of medical facts for what is revealed by review of the original 1986 PA x-ray film. Major Whigham's February medical finding for the 1986 PA chest x-ray film is as follows: "There is no abnormality of the heart, lungs, etc., with no mention under federal law for finding bi-apical pleural thickening, or a finding for nodular densities. See enclosed health report dated 10 February 1986 for the 1986 visit and 1986 radiology report from Maj. Whigham for the 1986 visit.

Facts under law for the 1986 omission are, I requested a congressional inquiry to find out the status of the correction request. The correction request was submitted 28 October 1992. Status of the request was released through congressional inquiry to the Honorable Paul Sarbanes 14 October 1994. See enclosed letter from the Honorable Paul

Sarbanes, dated October 14, 1994. When I did hear from Department of Air Force, I was told the application for correction was denied because the "Board concluded that the application was not timely filed".

In court papers Judge Chasanow states in the Memorandum Opinion for Order of Judgment issued the 22nd day of September 1998 that:

> AFBCMR's refusal to correct the 1986 record is based on timeliness. Also the United States District Court of Maryland's Memorandum Opinion issued the 11th day of October 1996 upheld United States refusal to release records beyond the death certificate and application (in support of their refusal to correct Major Whigham's omission) with the issue of law for the correction denial and remanding Plaintiff civil claim being: Plaintiff filed a untimely application.

Judge Chasanow found as far AFBCMR was concerned, it was not when Ms. Edwards actually became aware of the relevant facts for the correction, but rather when Ms. Edwards reasonably could have discovered the relevant facts. Court papers state it may have been error for AFBCMR to use a reasonable person test for timeliness. However, the civil record shows the court, placed Ms. Edwards and the civil record at a unfair disadvantage by not ruling on Defendant's statute violations 11October 1996. The civil record affirms the U.S. District Court elected to rule:

> Plaintiff's FOIA claim is dismissed, thereby eliminating justice for the remanded civil record with the issue of law being: Defendant's reviewed the remanded civil claim and without submitting any evidence beyond the "Addendum To Record of Proceedings, affirm: "Correction of Major Whigham's Omission is not warranted and there is no injustice data on the civil record that requires resolution by the Court.

Enclosed is a copy of AFBCMR's "Addendum to Record of Proceedings", dated March 31, 1997 used unjustifiably against Plaintiff in DKC-97-1533 after U.S. District Court remanded the case back to the United States, with the issue of law for the remanded case being: We, Defendants are denying Plaintiff's evidence used to affirm the request was timely filed under statute and we are denying evidence of that affirms, Major Whigham omitted radiographic data for Malcolm Grows 1986 radiology record for the late MSgt Edwards. Thus, correction based on the lawful request continues to be denied.

II. Timely Filing of Application For Records Correction.

The AFBCMR states in their letter dated 14 March 1990 that you have three years to request the records correction. The medical report from Georgetown University Hospital shows the date I discovered Major Whigham chose to omit medical facts that I asked be corrected. The United States admit in court papers "Motion To Dismiss or in the Alternative For Summary Judgment", dated 6 October 1997 that: Doctor Whigham radiologist at Malcolm in 1986 chose not to comment or place in the medical record a finding for nodular densities and bi-pleural thickening when Mr. Edwards came to Malcolm Grow 10 February 1986 for the acute appointment.

The enclosed notices from Department of Air Force, dated 12 April 1993, shows the application for correction was received 9 November 1992 and that the United States was waiting to receive the medical records from the Department of Veterans Affairs. The enclosed notice from the Department of Air Force, dated 20 October 1993 shows the United States awaiting the completion of a staff advisory opinion prior to denial.

The application for correction shows in block 10 of the DD Form 149, Feb 86, that the United States Court of Veterans Appeals COVA No. 91-1685 for VA number XSS

513-30-5804 was reviewing the medical records. Block 11 for discovery of the alleged error or injustice data is shown as 4/16/90. The Department of Air Force stated in the letter dated 14 Mar 1990, paragraph 3, if the Veterans Administration (VA) is doing a review of your requested benefits, this application may be delayed. As shown by the correspondence from Department of Air Force, the United States received the medical records upon release by the Department of Veterans Affairs and after review the request for correction was denied; even though, application was made in accordance to law. Ms. Edwards states the omission denied rights to justice while the medical records were under view by the Department of Veterans Affairs from 1988 through 1994. And that, the medical records remained un-corrected after the official request in 1992, showing justice continued to be denied from 1992 through 1994.

See enclosed letter, sent to AFBCMR, dated 20 July 1994. This letter states, date of discovery for the 1986 issue is 16 April 1990 and that Malcolm Grow omitted medical facts that should be apart of the original 1986 issue under review by the Veterans Administration for Benefit of Doubt and Dependency Indemnity Compensation.

The enclosed letter, sent to AFBCMR 20 July 1994 requested correction based on facts being reviewed by the Department of Veterans Affairs. In this letter I state: I requested a medical records correction because, **after having each of my husband's available chest x-rays read by a independent doctor; they were in agreement on all of Malcolm Grows medical findings except for the one 1986 chest x-ray report.** I further state: The medical conclusion could be: The two nodular densities found by Doctor Freedman in 1986 is representative or related to the nodular densities found by past doctors at Malcolm Grow who opined that densities as being nipple shadows. Plaintiff's civil claim affirms there is no evaluation for the finding of nipple shadows based on the longevity of the shadows for a preexisting condition that may have contributed to the development of cancer with Defendants refusing to correct Major Whigham's omission. Ms. Edwards clearly state on page 12 of the original Notice of Right to sue:

I believe, the longevity of these shadows are representative of a medical problem that may have an earlier origin. After sending the United States this certified letter to as follow up to the application for correction; the application on 11 October 1994 was denied based on timeliness. The civil record shows Plaintiff is being unjustifiably denied correction of Malcolm Grows 1986 medical record as a matter of law. With Plaintiff requesting review of the corrected medical record for final determination of past findings of nodular densities (1979 through 1981); to include findings of nodular densities in 1988 for determination of a preexisting condition related to the cancer that caused death.

Enclosed is a copy of the letter I received from Department Of Air Force, dated 22 November 1994. This letter shows the United States is stating, the essential facts which gave rise to the application were known by me long before the asserted date of discovery. The civil record before United States District Court of Maryland shows Defendants never released records to affirm
Plaintiff discovered the essential facts before the asserted date of discovery. The civil record clearly affirms Plaintiff took United States to Court for not releasing records that support their claim for refusing to correct Major Whigham's 1986 omission. With United States District Court of Maryland dismissing Plaintiff's lawful request for records under FOIA. The civil record affirms AFBCMR received Summary Judgment with Untied States District Court of Maryland never ruling on Defendants statute violations. The civil record based on Plaintiff claims shows the court ruled: Defendants do not have to release records in support of the date of discovery even with Plaintiff submitting Doctor Freedman's medical finding affirming 16 April 1990 Plaintiff discovered Major Whigham omitted medical facts under federal request for correction.

The Memorandum Opinion and Order from Judge Chasanow dated 11 October 1986 shows Plaintiff unsuccessfully asked the Court to Order AFBCMR to disclose any and all documents supporting the denial decision that shows under Federal Law: Myra R. Edwards discovered or reasonably could have discovered Major Whigham's 1986 omission more than three years before filing the application for correction. The finding of the Court: While FOIA grants district courts jurisdiction to enjoin a agency from improperly withholding agency records, see 5 U.S.C. section 522 (a) (40 (B), a prerequisite to that jurisdiction is that there must be improper agency action under statute. The civil record shows U.S. District Court improperly ruled there is no improper withholding of agency records with the issue of law clearly being: Plaintiff's evidence, (Doctor Freedman's reading of Malcolm Grows 1986 PA chest x-ray film) with Defendants asserting there are records to affirm Plaintiff discovered Major Whigham's omission more than three years.

Thus the civil record DKC-95-3115 and DKC-97-1533 affirms United States District Court of Maryland erred when accepting the late MSgt Edwards death certificate to affirm under statue that Plaintiff's application was not timely filed.

The U.S. District Court ruled against Plaintiff based on the following unjustifiable fact shown in DKC-95-3115 Courts ORDER and Memorandum Opinion:

> The important point, as far as AFBCMR was concerned, was not when Ms. Edwards actually became aware of the relevant facts, but rather when Ms. Edwards reasonably could have discovered the relevant facts. Unjustifiable facts against
> Plaintiff: AFBCMR made a judgment that she reasonably could have discovered the relevant information at least at the time her husband died of cancer, and unless they reduce their unjustifiable determination to writing there would be no documents responsive to Ms. Edwards FOIA request.

III. Official Notice.

I am sending official notice to all interested parties for response within 30 days for claim in the United States District Court for the District of Maryland against United States under Title 10 Armed

Forces Subtitle A Military Law, Section 1552. This claim shall be for:

> Violations under statute, based on the request to have Malcolm Grow USAF Medical Center's 1986 radiology report corrected from 1992 through 1994. For, admissions that the United States knew Major Whigham omitted/failed to comment on material facts being adjudicated by the Department of Veterans Affairs who reviewed Malcolm Grows medical records from 1988 through 1994. For using the medical facts given by Ms. Edwards adversely without submitting new evidence to affirm/evidence of record by Plaintiff does not require resolution based on the Merits of Plaintiff's lawful claim. For unlawfully denying correction as untimely by violating statute when using a reasonable person test to assert without evidence of ~~record (~~Death Certificate) that Ms. Edwards had knowledge of Major Whigham's omission prior to receiving Doctor Freedman's radiographic finding. Ms. Edwards claim affirms the U.S. District Court, Court of Appeals for the 4th Circuit and Defendants denied correction with evidence on the civil record affirming: Plaintiff's rights are being denied with the Court and Defendant's unlawfully protecting the Physician's breach of duty when he chose to omit relevant radiographic medical facts for Malcolm Grows 1986 written medical record for the late MSgt. Edwards.

Malcolm Grows medical records for the 1986 issue shows, this agency has no records to affirm Major Whigham found any of the medical information Doctor Freedman's found after reviewing duplicate copies of Malcolm Grows 1986 PA x-ray film. With Plaintiff requesting evaluation of Malcolm Grows corrected 1986 medical record from 1988 through 1994. Thus, Ms. Edwards claim is for Defendants denying rights under law for having the 1986 medical record corrected based on the application for correction and certified letter sent 20 July 1994 for evaluation on the longevity of nipple shadows. The civil record affirms Plaintiff requested correction for an unbiased finding, to affirm if the shadows found in 1978 through 1988, including facts in omission for the 1986 PA x-ray report represent a pre-existing condition that contributed to the development of cancer.

The Department of the Air Force states ...the Board waives timeliness if "...in the interest of justice." The Board reviews the merits of untimely applications and, if found to be meritorious, waves timeliness in the interest of justice. Facts for Plaintiff's records correction: There never was a issue based on timeliness, except for Defendant's unlawfully importing a reasonable person test in Title 10 Section 1552 for the correction denial. Under law, the U.S. District Court of Maryland found, there were no documents to release under FOIA to affirm Ms. Edwards had knowledge of the 1986 issue before receiving Doctor Freedman's 16 April 1990 radiology finding for duplicate radiology film from Malcolm Grow USAF Medical Center. Mr. Edwards died 11 October 1988 from Large Cell Carcinoma of the lung.

To all concerned, I shall request concurrent jurisdiction under United States Code Annotated, Title 28 Section 1346, 242 subsec. (a) (2) to adjoin this case with claim before Untied States Court of Federal Claims. Notice of the intent to file a claim in the United States Court of Federal Claims was sent by certified mail to all of the named parties on 28 September 1998.

Encls
as stated
See index (not included)

Sincerely,

/s/ _______________
Myra R. Edwards

CF:
Lynne A. Battaglia,
United States Attorney
ATTN: Kaye A. Allison Esq.

Assistant United States Attorney
OFFICE OF THE U.S. ATTORNEY
604 United States Courthouse
101 West Lombard Street
Baltimore, MD 21201

Honorable Janet Reno
Attorney General
Department of Justice
10th and Constitution Avenues, N.W.
Washington, DC 20530

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS
v. CIVIL ACTION NO. DKC-97-1533

DEPARTMENT OF THE AIR FORCE
AFBCMR
MALCOLM GROW USAF MEDICAL CENTER

****

MYRA R. EDWARDS
v. CIVIL ACTION NO. DKC-98-4190

DEPARTMENT OF THE AIR FORCE
AFBCMR
MALCOLM GROW USAF MEDICAL CENTER

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ORDER

The above-captioned actions[1] were dismissed on September 24, 1998 and January 29, 1999 respectively.

On December 7, 2001, I denied plaintiff's motions for release of records to the United States Court of Federal Claims. The Order denying said motions was entered on the docket on December 10, 2001. On December 18, 2001, Ms. Edwards filed a consolidated Motion to reconsider the aforementioned decision. The motion was denied on January 9, 2002. An appeal of the latter ruling is pending before the Fourth Circuit.

On March 1, 2002, Ms. Edwards filed a consolidated request to set aside the previous decision to grant summary judgment in the defendants, favor. Even affording the *pro se* pleading a generous construction under Fed. R. Civ. P. 59 (e) or 60 (b) the motion is untimely. Further, it merely represents the plaintiff Is attempt to relitigate issues that have heretofore been exhaustively reviewed and ruled on by this Court. Ms. Edwards was provided a fair and equitable forum in which to have her tort claims heard. It has been over two years since judgments were entered against her. Her dissatisfaction with those decisions does not give her license to resurrect her claims in perpetuity. For these reasons the consolidated motion to set aide judgment shall be denied.

Accordingly, IT IS this 8th day of Mar 2002, by this Court hereby ORDERED that:

1. Plaintiff Is consolidated motion to set aside judgment IS DENIED; and

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[1] Judgment was entered on the merits' in favor of the defendants in *Edwards* v. Dep't *of the Air Force, et* al., Civil Action No. DKC-971533. Plaintiff did not file a direct appeal of that decision. *Edwards v. Dep't of the Air Force,* et al. Civil Action No. DKC-98-4190 was dismissed as barred under the doctrine of *res judicata.* That decision was affirmed on appeal.

2. The Clerk of the Court MAIL a copy of this Order to the plaintiff and to Assistant United States Attorney Larry Adams, 6625 United States Courthouse, 101 W. Lombard Street, Baltimore, Maryland 21201.

/s/ ____________________________

Deborah K. Chasanow
United States District Judge

DEPARTMENT OF VETERANS AFFAIRS-RATING DECISION

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1. **VETERAN'S INITIALS SOCIAL AND SURNAME NUMBER**	2. **VETERANS SECURITY**
H E EDWARDS	513-30-5804
3. **VETERANS FILE NUMBER**	4. **DATE OF THIS RATING**
513-30-5804	06/15/94

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5. **NARRATIVE:**

ISSUE:

1. Service connection for the cause of the veteran's death.

EVIDENCE:

Service medical records
Reports of treatment from post service
Veteran's death certificate

DECISION:

1. Service connection for the cause of the veteran's death is denied.

REASON AND BASES:

The death of a veteran will be considered as having been due to a service connected disability when the evidence shows that one or more service connected disabilities was the primary cause of death, or a contributory cause of death.

A service connected disability will be considered the primary cause of death when such disability, singly, or jointly with some other condition was the immediate or underlying cause of death.

Contributory cause of death is defined as a condition which is not related to the primary cause of death, but contributed materially to the death of the veteran. The death certificate shows cause of death certificate shows the cause of death as large cell carcinoma of the lung. Under the authority granted by the Agent Orange Act of 1991, the VA has determined that presumption of service connection based on exposure to herbicides used in Vietnam is not warranted for.

VA has also determined that a presumption of service connection on exposure to herbicides used in Vietnam is not warranted for any other condition than for those which VA has found a positive association between the condition and such exposure.

VA has determined that a positive association exists between exposure to herbicides and the subsequent development of the following seven conditions: chloracne, non-Hodgkin's lymphoma, soft tissue sarcoma, Hodgkin's disease, porphyria cutanea trada, multiple myeloma, and cancers of the lung, bronchus, larynx and trachea.

However, while instructions have been given for processing of claims for the first three conditions shown, we are still awaiting instructions concerning effective dated and so on in processing the other conditions cited. Final decision is therefore deferred at this time based on claim Agent Orange exposure.

In addition, while there has been a General Counsel Opinion concerning claims for disabilities due to smoking, we have instructions to defer any decisions pending instructions for the processing of those claims. Therefore, final action on claim on this basis is also deferred.

Review of the record does not indicate the existence of asbestos lung disease. While we recognize that in a veteran with in-service exposure to asbestos develops lung disease, subsequent development of a lung cancer would be due to the asbestos. However, in this case there is no evidence to show asbestos disease of the lungs.

1120 Windemere Court
Fort Washington, MD 20744
15 September 1999

Department of the Air Force
Headquarters Air Force
Military Personnel Center
Randolph Air Force Base, TX 78150
Certified Request Article # P 230 776 268

Department of the Air Force
AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews Air Force Base, MD 20762-7002
Certified Request Article # P 230 776 269

Department of the
Legal Office
Malcolm Grow USAF Medical Center
Base, MD 20762-7002
Article # P 230 776 269

Department of the Air Force
Malcolm Grow USAF Medical Center
Andrews Air Force Base, MD 20331-5300
Certified Request Article P 230 776 270

CERTIFIED REQUEST RETURN RECEIPT
REQUESTED
SEE ABOVE ADDRESSEES

OFFICIAL NOTICE OF RIGHT TO SUE
UNITED STATES
BASED ON NEWLY DISCOVERED EVIDENCE
USED ERRERONUSLY TO MISLEAD
UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF MARYLAND

WHO GRANTED SUMMARY JUDGMENT BASED ON AFBCMR's REVIEW OF THE REMANDED CIVIL RECORD TO AFFIRM MAJOR WHIGHAM DID NOT ERROR WHEN OMITTING A COMMENT ABOUT NODULAR DENSITIES SEE COURT ORDERS FOR DKC-95-3115 AND DKC-97-1533

To the above addressees,

This certified notice is being sent to notify all interested parties that a claim will be submitted against AFBCMR and directing agencies Malcolm Grow USAF Medical
Center (collectively referred to as the United States) for violations under Title 10 Armed Forces Subtitle A Military Law, Section 1552(4) (b) and United States Code Annotated, Title 28 Section 1346, 242 subsec. (a) (2). This law suit will be based on AFBCMR capriciously misleading the United States District Court of Maryland in the remanded civil complaint DKC-97-1533 to affirm: The Board found no error or injustice warranting correction of the late Mr. Edwards 1986 radiology record. See Addendum To Record Of AFBCMR's Proceedings, RESUME OF CASE, page 1 beginning with: The Board considered the application and was not persuaded that the record raised issues of error or injustice which required resolution on the merits. Also see AFBCMR's MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS... page 3 for conclusions by the Board. Page 3, shows AFBCMR states: In- Ms. Edwards case, the Board found no error or injustice warranting correction of the late Mr. Edwards' records **but elected to unjustifiably decide the case on timeliness, see enclosed letters sent to Senator Paul Sarbanes and Ms. Edwards in 1994.** United States District Court of Maryland reviewed the civil complaint (DKC-95-3115) based on AFBCMR assertions for timeliness. Timeliness based on error under Federal Law is discussed later.

The enclosed letter from AFLSA/JACL shows the issue before Judge Wiese, United States Court of Federal Claims Associate Judge in 98-930C concerns AFBCMR's Exhibit at 17 (for Addendum To Record Of Proceedings). The issue of law argued before Judge Wiese was whether or not the BOARD reviewed the contested 1986 lateral and PA x-ray film used by AFBCMR to claim in 1997, the remanded issues before Judge Chasanow (DKC-97-1533) affirm: Major Whigham's omission did not cause the 1986 radiology record for the late Mr. Edwards to be in error.

Ms. Palko, attorney for the United States, argued before Judge Wiese that AFBCMR's Addendum To Proceeding affirm the Board reviewed the contested 1986 radiology film for conclusions as a matter of law based on finding: **"We do not find it unusual that Malcolm Grow Medical Center did not note the presence of nodular densities/nipple shadows on the PA view of the 1986 x-ray film since the x-ray film taken on the same date from the lateral view did not reveal the nodular densities/nipple shadows".** The issue of law for this finding is: Upon talking with the medical examiner who worked the case for the United States; it is discovered that the AFBCMR's conclusions for the remanded civil record were based on the 1986 radiology report Ms. Edwards' is contesting rather than a review of the lateral chest x-ray film.

The civil record before Judge Chasanow in DKC-95-3115 and DKC-97-1533 affirm: Ms. Edwards by application of law in 1992 requested the records correction through AFBCMR based on discovering 16 April 1990 Major Whigham omitted a notation for nodular densities **revealed only by reading the late Mr. Edwards 1986 lateral and PA x-ray film.**

AFBCMR's MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS (DKC-97-1533) ... page 6, shows: AFBCMR affirm before Judge Chasanow that Summary Judgment is Appropriate Because There are No Material Facts in Dispute. Judge Chasanow ORDER and MEMORANDUM OPINION, DKC-97-1533, affirm Summary Judgment was granted to the United States 22 September 1998. Ms. Edwards received AFLSA/JACL notification 24 February 1999, based on arguments before Judge Wiese for AFBCMR's Addendum To Record Of Proceedings filed concurrently with claim before United States District Court of Maryland. **For the record,** Judge Chasanow did not allow Ms. Edwards' to argue the issues of the complaint in court, therefore additional time and money was spent to get the issues of law on record for AFBCMR claiming in DKC-97-1533 Judgment is Appropriate Because There Are No Material Facts in Dispute.

The enclosed letter from AFLSA/JACL affirm on page 2 that an attempt was made based on arguments before Judge Wiese in civil action 98-930C to locate the late Mr. Edwards' 1986 x-ray film. The enclosed letter from AFLSA/JACL on page 2 shows the 1988 and 1986 x-ray film were scheduled for destruction in January 1994.

FOR THE RECORD OF PROCEEDINGS IN DKC-97-1533: AFBCMR's enclosed ADDENDUM TO RECORD OF PROCEEDINGS affirms on page 2 Under THE BOARD CONCLUDES. That Judge Chasanow should have ruled it was error in 1994 for AFBCMR to import a reasonableness standard into the date Ms. Edwards' discovered Major Whigham, USAF at Malcolm Grow, omitted a comment or notation for nodular densities. The enclosed civil record released to Ms. Edwards for the COURTS ORDER in DKC-95-3115 **affirm Judge Chasanow Opined** it **was error** to import a reasonableness standard into the date of discovery. The finding of the court for civil complaint **DKC-95-3115 affirms Ms. Edwards was denied all monetary relief** with the civil record for **final Judgment** based on Judge Ellis finding for the reasonableness standard in McFarlane v. Secretary of the Air Force being remanded to AFBCMR. See DKC-95-3115 affirming Judge Chasanow opined on page 12: **"It was contrary to law for the AFBCMR to import a "reasonable person" test into section 1552(b). And the statute of limitations on Ms. McFarlane's claim that runs only from the time that she actually discovered that she was receiving a reduced annuity". Therefore in light of Judge Ellis' ruling in McFarlane, this matter will**

be remanded to AFBCMR for further proceedings. AFBCMR's Addendum To Record Of Proceedings on page 2 under The Board Concludes that, 2): States, "in view of the Court's ruling (remanding the case to AFBCMR) based on the ruling in McFarlane v. Secretary of the Air Force... AFBCMR affirm Ms. Edwards' civil complaint was thoroughly reviewed based on the evidence of record **with noting the applicant's contentions for the contested 1986 radiology record,** affirm: **"We are again not persuaded that an error or injustice exists in this case". ERROR UNDER FEDERAL IAW:** It's the language AFBCMR used to affirm "Judge Chasanow" ruled in DKC-95-3115 that it was error for AFBCMR to import a reasonableness standard into the date Ms. Edwards discovered Major Whigham's 1986 omission. **FACTS AS A MATTER OF LAW:** "Judge Chasanow" **never** ruled in DKC-95-3115 or DKC-97-1533 or barred civil complaint DKC-98-4190 that it was error for AFBCMR to import a reasonableness standard into the date of discovering Major Whigham's 1986 omission.

The issues of Law for the 1994 correction denial before the Honorable Paul Sarbanes are as follows. DKC-953115 affirms Ms. Edwards claims for damages were dismissed and that, Judge Chasanow remanded the 1994 correction denial to AFBCMR because contrary to law, the Board imported a reasonableness standard into the date of discovering Major Whigham's 1986 omission. Ms. Edwards' civil complaint shows the issue of law for Judge Chasanow 22 September 1998 ruling is: AFBCMR admit in its Addendum To Record Of Proceedings for this court's ORDER, **it was error to import a reasonableness standard into the date of discovery.** However, DKC-97-1533 affirms Summary Judgment was granted to the United States showing error under Federal Law **if Judge Chasanow** did uphold Judge Ellis finding in McFarlane v. Secretary of the Air Force in either DKC-95-3115 or DKC-97-1533 for Ms. Edwards stated claim. Admissions before Judge Chasanow in DKC-97-1533: AFBCMR affirm Major Whigham chose to omit a comment about nodular densities/nipple shadows in Malcolm Grows written report for the late Mr. Edwards in 1986. See enclosed MOTION TO DISMISS... AND MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS... Page 7 and 8 for AFBCMR's conclusions based on the omission showing the Board assert: "The fact that this doctor chose not to include a comment about nipple shadows does not make the record in error or inaccurate". **Newly discovered facts** for Major Whigham choosing to omit a comment nodular densities/nipple shadows in the late Mr. Edwards medical records. See enclosed letter from AFLSA/JACL, affirming the Board's review for the remanded civil record is based on Major Whigham's 1986 omission. To affirm under Federal Law the military record should not be corrected, this letter also shows the x-ray film for the 1986 issue were destroyed in 1994 by the Air Force. **THE ISSUE OF LAW:** The Board affirm in its Addendum To Record Of Proceedings Ms. Edwards' civil complaint for the contested 1986 radiology record was thoroughly reviewed. However it is now known (24 February 1999) that the Board's conclusions for the correction denial were based on Major Whigham's 1986 omission rather than review of the 1986 radiology film. Ms. Edwards state under Federal Law the newly discovered facts in the letter from AFLSA/JACL affirm there has been **no resolution** under law, to affirm Major Whigham did not error when omitting radiographic data still not apart of the late Mr. Edwards' medical records.

Ms. Edwards finds AFBCMR's 1997 ADDENDUM TO RECORD OF PROCEEDINGS affirms it was the language used that led to an injustice under Federal Law for the wrongful denial of the late Mr. Edwards 1986 military record's correction in DKC95-3115 and DKC-97-1533. Request review of the following statements based on AFBCMR's correction denial for errors under Federal Law from 1994 through the present:

1. AFBCMR in 1994 denied correction of the 1986 Military record by asserting Ms. Edwards' did not file a timely application. See enclosed letters to Senator Sarbanes and Ms. Edwards in 1994. Facts for the newly discovered evidence is: Major Whigham's omission remains uncorrected showing AFBCMR conclusions for the correction denial for the remanded

civil complaint was based on the 1986 radiology report (being contested by Ms. Edwards) rather than a review of the 1986 radiology film. With the issue of law for the granting of summary judgment in DKC-97-1533 being **the 1986 record raise no issues of injustice or error which require resolution on the merits.** See Addendum To Record Of Proceedings, page 1 paragraph 1. To include AFBCMR asserting, Judge Chasanow **ruled** it was error to import a reasonableness standard in to the date of discovery. Ms. Edwards shall bring suit because AFBCMR capriciously denied correction of the military record to include falsely claiming Judge Chasanow RULED to uphold Judge Ellis ORDER in McFarlane v. Secretary of the Air Force. The enclosed adjudicated record and Orders for DKC-95-3115 and DKC-97-1533 affirm AFBCMR was granted Summary Judgment **for all issues of law.** Ms. Edwards will submit the letter from AFLSA/JACL for judgment on the language AFBCMR used to affirm under Federal Law in DKC-97-1533 there were no issues in dispute when Judge Chasanow granted Summary Judgment to United States. Ms. Edwards' new civil complaint will be based on errors under Federal Law, for the 1997 correction denial based on Summary Judgment after discovering 24 February 1999 the Board used the contested record for assurances that there are no Material Facts in Dispute. Ms. Edwards' civil complaint will be for errors under Federal Law in DKC97-1533 for the granting of Summary Judgment using the contested 1986 radiology record (contrary to law). Issues of Law: The United States assert upon review of the remanded record in 1997, Major Whigham's omission does not make the 1986 record in error or create an injustice that Ms. Edwards' should receive relief for. With facts as a matter of law showing it was Major Whigham's contested data used to affirm the uncorrected record does not create an injustice.

2. Newly discovered facts based on the enclosed letter from AFLSA/JACL shows: It was the language used in AFBCMR's Addendum To Proceedings that unjustifiably denied correction of the 1986 Military record based on wrongful assumptions under Federal Law in determining the

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Board in 1997 reviewed the 1986 x-ray film.

3. **ISSUE OF LAW:** The Addendum To Record of Proceedings on Page 1, paragraph 1 affirms: The Board considered the application based on Judge Chasanow remanding the case o AFBCMR in 1996. Showing the Board state 31 March 1997: "It was not persuaded that the record raised issues of error or injustice which required resolution on the merits. The issue of Law, in DKC-95-3115 is Judge Chasanow remanded the civil complaint based on Judge Ellis ruling in McFarlane v. Secretary of the Air Force. However the remanded case still shows: The U.S. District Court denied all claims for damages to include, the United States District Court Of Maryland Granted Summary Judgment to the United States without upholding Judge Ellis ruling in McFarlane v. Secretary Of The Air Force. DKC-97-1533 affirms Ms. Edwards is being denied correction with admissions before Judge Chasanow in DKC-97-1533 to affirm Major Whigham chose to omit radiographic data that Ms. Edwards' by application of law for civil complaint DKC-95-3115 asked be corrected. DKC-95-3115 and DKC-97-1533 shows the issues of law for the 1992 correction request were over shadowed by AFBCMR affirming on the civil record: Major Whigham's omission does not affirm a chronic condition that may have lead to the late Mr. Edwards primary cause of death.

BACKGROUND FOR THE CORRECTION REQUEST: Ms. Edwards' request for correction of the military record began with the Veterans Administration reviewing the late Mr. Edwards military record as a matter of law in 1988 through 1994 based Ms. Edwards request for survivor benefits for primary cause of death. 1990, Ms Edwards requested copies of the late Mr. Edwards 1986 and 1988 x-ray film. 16 April 1990, Ms. Edwards discovered Major Whigham omitted a finding for nodular densities/nipple shadows in Malcolm Grows medical report for the late Mr. Edwards. 1989 and 1990 Ms. Edwards had Malcolm Grows medical records reviewed. Facts for the uncorrected medical record: Doctor's reviewing Malcolm Grows records

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consistently state: nodular densities were found in 1979 through 1981 believed to be nipple shadows; however Malcolm Grows 1986 record is void for the finding and evaluation of nipple shadows in 1986. October 28, 1992 by application of law, Ms. Edwards requested the military record's correction. However, the issues based on law for correction from 1992 through this present date, affirm AFBCMR is refusing to correct the 1986 omission even though AFBCMR admit on the 1997 civil record before Judge Chasanow, Major Whigham chose to omit radiographic data that was under request for correction in 1992. With the issue of law being: AFBCMR denied correction in 1994. Ms. Edwards filed suit in the United States District Court of Maryland in 1995. Judge Chasanow remanded the case to AFBCMR in 1996. AFBCMR reviewed the remanded case in 1997, showing correction is being denial upon review of the remanded civil complaint. Judge Chasanow in 1998 Grant Summary Judgment to the United States for the remanded issues. 1999, Judge Chasanow bars Ms. Edwards' civil complaint under the doctrine of res judicata in DKC-98-4190 for all future actions resulting from AFBCMR's unlawful correction denial of Major Whigham 1986 omission.

To affirm errors in DKC-97-1533 under Federal Law for the correction denial, Ms. Edwards' is submitting the following quote found in AFBCMR's MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS... page 3:

"Although Ms. Edwards application for correction was denied on timeliness, the Board also reviewed the merits of her case. This quote affirms the governing statutes permits the Board to waive timeliness... in the interest of justice." Facts before the United States District Court of Maryland in DKC-95-3115 and DKC-97-1533, Ms. Edwards' complaint did not require a waiver for correction. To include, Ms. Edwards' civil complaint affirms Judge Chasanow did not uphold Judge Ellis ruling in McFarlane v. Secretary of the Air Force, as Mr. Edwards 1986 radiology record remains uncorrected, showing Ms. Edwards is being denied all claims for relief. The Addendum To Record of Proceedings affirm AFBCMR state, Judge Chasanow ruled it was error for AFBCMR to import a reasonableness standard. However DKC-95-3115, DKC-97-1533 and DKC-98-4190 affirm Judge Chasanow rulings were in favor of AFBCMR regardless of error under Federal Law for Ms. Edwards' civil claim.

Ms. Edwards is sending this notice to inform all that she shall ' bring suit for the newly discovered facts in the enclosed letter from AFLSA/JACL for all errors of law that shows AFBCMR unjustifiably denied correction of Major Whigham's 1986 omission.

United States District Court of Maryland ORDER and Memorandum Opinion issued 22 September 1998: Affirm Summary Judgment was granted to AFBCMR for all issues under Federal Law based on the United States malicious assertions in the Addendum To Record of Proceedings and Memorandum of Law In Support of Motion to Dismiss. Showing the facts used to affirm Summary Judgment under Federal Law unjustifiably denied Ms. Edwards' merit based on the complaint for the record correction. Thereby affirms Ms. Edwards' was denied merit as a matter of law March 31, 1997 based on the BOARD using:

Major Whigham's 1986 uncorrected radiology report to assert: The evidence before us, affirms no basis to conclude that a chronic condition existed prior to MSG Edwards' retirement from the Air Force in 1982... (See Memorandum of Law In Support Of Motion To Dismiss, page 4 quote) for issues of law. Ms. Edwards state the aforementioned quote and the following quote by AFBCMR 31 March 1997 was released to arbitrarily deny correction by asserting:

1. "We do not find it unusual that Malcolm Grow Medical Center did not note the presence of nodular densities/nipple shadows on the PA view of the 1986 x-ray film taken on the same date from the lateral view did not reveal the nodular densities/nipple shadows (See Addendum To Record Of Proceeding, page 3 beginning with **To the contrary...** ;

AND

2. Based on the evidence before us, we find no basis to conclude that a chronic condition existed prior to MSG Edwards' retirement from the Air Force in 1982... See Memorandum Of Law In Support Of Motion To Dismiss... Page 4, **Beginning** with: **Based on evidence before us...**

AFLSA/JACL letter shall be submitted to the United States District Court of Maryland, as a matter of law, to confirm Ms. Edwards is being unjustifiably denied correction of Major Whigham's 1986 omission based on the assumptions given to the Court in AFBCMR Addendum To Record Of Proceedings. The civil record for DKC-97-1533 affirms AFBCMR states in its MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS, page 7, 2: **The AFBCMR Decision Not to Correct MSG Edwards' Medical Records was not Arbitrary and Capricious.** However, the enclosed letter from AFLSA/JACL affirm AFBCMR capriciously state before the United States Court of Federal Claims in 1998, docket 498930C at Exhibit 17; and to the United States District Court of Maryland docket 4DKC-97-1533 for remanded claim in Addendum To Record of Proceedings: **"The Board reviewed the remanded record. With the unjustifiable issue being: The Board used (Major Whigham's 1986 omission) to capriciously affirm under Federal Law AFBCMR's Decision not to correct the military record is neither arbitrary or capricious. To include finding the uncorrected issue does not violate Ms. Edwards rights for the correction request or the deceased rights upon discovering Major Whigham chose to omit a comment about nodular densities, see DKC-97-1533 pages 7-8. AFLSA/JACL letter affirms: AFBCMR wouldn't know a lateral x-ray was taken unless they had the film when they reviewed the case in 1996 based on Judge Chasanow Court ORDER in DKC-95-3115.** Facts for the remanded civil complaint based on the newly discovered facts are: After talking to the examiner who worked the case for the United States, Ms. Edwards' discovers AFBCMR's capricious conclusions were based on the uncorrected 1986 radiology report. With facts as a matter of law affirming Ms.

Edwards contested Major Whigham's omission in 1992 by application of law and through Court Proceedings in 1995 before Judge Chasanow. Page 2 of the letter from AFLSA/JACL affirms MSG Edwards' x-ray film for 1986 fell under Rule 10, showing they were destroyed in accordance with the standard disposition schedule. This letter affirms MSG Edwards 1986 and 1988 radiology film was destroyed in January 1994. This fact shows, the late Mr. Edwards radiology film were destroyed three years before Judge Chasanow remanded the case for further proceeding. AFLSA/JACL also affirm no court documents were released to affirm the destruction of the 1986 radiology film.

The enclosed letter dated 3 August 1993 from Ms. Edwards through SAF/MIBR was sent to request a review of the actual 1986 and 1988 x-ray film. Showing this request also included SAF keeping the 1986 and 1988 film longer than the standard disposition schedule for resolution of facts used in DKC-97-1533 to affirm Major Whigham did not error when he chose to omit radiographic data not apart of the late Mr. Edward' medical records. AFBCMR's MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS, page 6 (b) states: **Summary Judgment is Appropriate Because There Are No Material Facts in Dispute.** Facts under Federal Law based on United States granting Summary Judgment to AFBCMR, 22 September 1998 is as follows: Ms. Edwards discovered 24 February 1999 that AFBCMR capriciously used Major Whigham's 1986 radiology report for the contested issued. Court records and the application for correction affirm Ms. Edwards' discovered Major Whigham's omission 16 April 1990. Court records affirm AFBCMR refused in the Addendum To Record Of Proceedings in 1997, to correct Major Whigham's 1986 omission in accordance with Federal Law and/or based on Judge Ellis ruling in McFarlane v. Secretary of the Air Force. Therefore, Ms. Edwards is submitting the letter from AFLSA/JACL to affirm AFBCMR elected to use Major Whigham uncorrected (contested) radiology data to affirm Summary Judgment is Appropriate Because There Are No Material Facts In Dispute.

Ms. Edwards is also enclosing United States District Court of Maryland Court ORDER issued 29 January 1999, Dismissing and barring civil action for the correction of MSG Edwards' 1986 radiology record under the doctrine of res judicata. Facts as a matter of law for United States District Court barring court action under res judicata, Ms. Edwards affirm 24 February 1999 one-month following this ORDER; she discovered AFBCMR arbitrarily and capriciously used Major Whigham's 1986 radiology record with the contested omissions to affirm, as a matter of law, Summary Judgment is Appropriate.

Ms. Edwards shall DEMAND relief in the amount of 4.5M for damages based on United States capricious actions for the remanded record. This request for relief is for: The anguish, hardship, and mental stress the United States placed on her from 1986 through the present based on facts for the omission and AFBCMR refusal to correct the omission that is still apart of the late Mr. Edwards medical records upon discovering in 1997, Major Whigham chose to omit radiographic data Ms. Edwards' based on Court records requested be corrected in 1992 and again in 1995. Please note: This claim is also for damages as a matter of law based on AFBCMR's knowledge of the omission upon receiving the application for correction in 1992, to include United States District Court's ORDER in 1996 Remanding the civil record for correction to discover the Board used the contested 1986 record from Major Whigham t o affirm Summary Judgment is Appropriate. This suit also includes damages based on having the uncorrected medical records reviewed in 1989 and 1990 with the omissions, leading to the belief there were no nodular densities for the 1986 record based on Major Whigham choosing to omit or not comment on nodular densities in 1986. Ms. Edwards had Malcolm Grows medical records reviewed by various independent doctors who did not know in 1989 and 1990 Major Whigham chose to omit radiographic data that to is still not apart of the medical record, based on the Board's assertions for the contested data.

Encls   Sincerely,
as

/s/ ______________
Myra R. Edwards

Cc:
Honorable Paul Sarbanes
United States Senator
Tower 1, Suite 1010
100 S. Charles Street
Baltimore, Maryland 21201-2700

Lynne A. Battaglia
United States Attorney
ATTN: Larry Adams
Assistant States Attorney
6625 United States Courthouse
101 W. Lombard Street
Baltimore, MD 21201

Honorable Janet Reno
Attorney General
Department of Justice
10th and Constitution Avenues, NW
Washington, DC 20530

I, Myra R. Edwards affirm the following documents are attached with this certified notice sent for right to sue:

1. AFBCMR letter to the Honorable Paul Sarbanes for the correction denial dated, 14 October 1994

2. AFBCMR's letter to Ms. Edwards denying correction dated, 11 October 1994

3. AFBCMR's RECORD OF PROCEEDINGS AIR FORCE BOARD FOR CORRECTION OF MILITARY issued 11 October 1994

4. AFBCMR's letter to Ms. Edwards denying reconsideration, dated 22 November 1994

S. United States District Court of Maryland's ORDER and Memorandum Opinion issued, 11 October 1996 for civil complaint DKC-95-3115

6. United States District Court of Maryland's ORDER and Memorandum Opinion issued, 22 September 1998 for civil complaint DKC-97-1533

7. AFBCMR's Addendum To Record Of Proceedings issued 31 March 1997.

8. AFBCMR's MOTION TO DISMISS AND MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS issued October 1997

9. United States District Court of Maryland's ORDER and Memorandum Opinion issued, 29 January 1999 for civil complaint DKC-98-4190

10. AFLSA/JACL letter as Memorandum to Ms. Palko dated, 24 February 1999.

11. Ms. Edwards letter to SAF/MIBR, dated 3 August 1993

12. Application for Correction of Military Record, dated 28 October 1992

Signed by: /s/ ____________________
Myra R. Edwards
Date 15 September 1999
Daytime # 703-806-3425

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT
OF MARYLAND

MYRA R. EDWARDS Civil No. DKC-95-3115
Plaintiff
vs.
DEPARTMENT OF THE AIR FORCE
AFBCMR
Defendant

PLAINTIFF'S APPEAL BASED ON U.S. COURT'S ORDER TO CLOSED ENTITLED CASE PRIOR TO CORRECTION OF 1986 RADIOLOGY REPORT FROM MALCOLM GROW MEDICAL CENTER WHICH SHOWS A CONTRACTION FOR MEDICAL FACTS PRESENTED BY PLAINTIFF FOR CLAIM U.S. COURT REMANDED TO AFBCMR FOR FURTHER PROCEEDINGS

COMES NOW, the plaintiff, Myra R. Edwards, to request under the Rules for Civil Procedure that prior to closing the above entitled case; this Court keep open for Judicial Review Court's Order showing Plaintiff's-case was remanded to AFBCMR for further proceedings.

The plaintiff is appealing the U.S. Court's Order to close the entitled case prior to AFBCMR being required to give full faith and credit for medical facts found on Georgetown University Hospital's 1990 Radiology Report, to show, Doctor Matthew T. Freedman's 1990 radiology report for duplicated 1986 Radiology Film from Malcolm Medical Center, support medical facts that show Malcolm Grow omitted material facts on their original 1986 radiology report.

The plaintiff came before this Court on 14 October 1995 to show under Federal Law, Malcolm Grow Medical Center made a material error on the original 1986 radiology report for my deceased husband. And that, AFBCMR refused to correct the error found for the 1986 issue based on the medical report the plaintiff received from Doctor Freedman in 1990.

Therefore, the plaintiffs appeal before this Court is being issued to request the U.S. Court do not close the above entitled case before AFBCMR complies, with the Order of this Court who remanded further proceeding.

The plaintiff finds, AFBCMR's medical finding should be based on the Order of the Court, and that AFBCMR should submit a meritorious medical finding that eliminates the medical facts found on Doctor Freedman's 1990 radiology report by stating conclusively: The medical records of Hartwell E. Edwards for the 1986 issue do not support medical facts that show Malcolm Grow omitted a finding for nodular densities/nipple shadows on the original 1986 radiology report. And that, the original 1986 radiology report shows the chest x-ray in question is void of a finding for nodular densities that may or may not be nipple shadows.

The 1990 medical report from Doctor Freedman shows: The duplicated film received by Georgetown University Hospital is identified as being copies of film received from Malcolm Grow Medical Center. The contradicted facts for Doctor Freedman's 1990 radiology report found the following medical facts for the 1986 issue: **"Bi-apical pleural thickening and two 1 cm nodular densities projected over both lower lung fields of Hartwell E. Edwards; showing Doctor Freedman's medical report found shadows that may be consistent with nipple shadows, and that facts for this finding would be valuable if supported by nipple markers".**

WHEREFORE, the original 1986 radiology report for Hartwell E. Edwards shows: Malcolm Grow Medical Center's radiology report did not include a finding for nodular densities/nipple shadows in 1986.

Under law, if Doctor Freedman's finding for the 1986 issue is found to be meritorious, the plaintiff would like to have the corrected medical record re-evaluated by a medical doctor who will be asked to determine, whether or not, the omission found for the 1986 issue support medical facts for the Benefit Of The Doubt. Based on the finding before this Court, the plaintiff my decide to re-open the original claim submitted to the Department of Veterans Affairs, to show: New medical facts related to the longevity of the nodular densities/nipple shadows found on the medical records of my deceased husband.

The undisputed facts for this entitled case shows my husband died of lung cancer in 1988 and that prior to his death, past medical reports show: Malcolm Grow found nodular densities over both lungs which shows doctors at this government facility believed each shadow found represents nipple shadows.

However, the facts in dispute for the above entitled claim are: Doctor Freedman's 1990 radiology report shows Malcolm Grow in 1986 omitted a finding for nodular densities/nipple shadows. Showing there are material facts that should be re-evaluated to show the medical doctor's at Malcolm Grow, who cared for my late husband in 1986, were aware of the nodular densities continued existence on the 1986 finding. Thereby showing, Malcolm Grows determination for the 1986 issue was correct when Malcolm Grow found his chest is: "Normal and the frontal and lateral projections shows no abnormality of the heart, lungs, medisstinum or bony thorax.

Under appeal before the U.S. District Court, the plaintiff request AFBCMR be required to give a medical report that shows whether or not, the plaintiffs' claim for a medical records correction is meritorious. The finding of the plaintiff, under this appeal is: This Court and the plaintiff have no way of knowing whether or not, in 1986 the medical doctor's knew material facts were omitted, showing the facts found on Doctor Freedman's medical report in 1990 were never medically evaluated in the context of looking at all nodular densities found on the medical record for determination of, whether or not, a pre-existing condition was present that may have lead to the development of lung cancer in 1987.

This appeal before the U. S. District Court is given to ensure the defendant under law-"Correct" my late husband's medical records in light of the 1990 report from Doctor Freedman, and/or under law is required to give the U.S. Court a meritorious medical report to show: In 1986, Malcolm Grow did not error on the original finding; thereby ensuring, due process is not denied the plaintiff for judgment by the Court who under law is required to review the merits of the defendant's denial decision. Under law the defendant is required to give justification and a copy of the medical report that shows in 1996/1997 AFBCMR found the original 1986 radiology film in question to be void of a finding for nodular densities/nipple shadows.

Therefore, to ensure the Order given by the U.S. District Court for the plaintiff request for a medical records correction; the plaintiff request the U.S. Court leave open the Order of the Court which remanded further proceeding for the correction of Hartwell E. Edwards 1986 radiology report. Thereby showing the corrected medical report from AFBCMR is based on the finding of the original 1986 chest x-ray film that Malcolm Grow Medical Center still have in their possession.

The plaintiffs request judicial review under this Court's Order, until the contradiction for the 1986 radiology report from Malcolm Grow Medical Center is corrected or a medical report is given to show no errors were found on the original 1986 radiology film. And that, the corrected medical report is being provided by AFBCMR, as documented proof that shows the original 1986 radiology film is void of a finding for nodular densities, even though, the plaintiff based her finding for a medical records correction on Doctor Freedman's 1990 radiology

report for duplicated film.

REMEDY SOUGHT BASED ON FINDING OF PLAINTIFFS APPEAL FOR COURT ORDERED JUDGMENT TO REMAND FURTHER PROCEEDINGS

Under Federal Law, the Court's Order to remand further proceedings for a medical records correction may show AFBCMR was negligent on the original finding for my late husband's 1986 radiology report. Should the corrected medical report show medical doctor's for AFBCMR were negligent by not reporting medical facts found in 1990 on the original chest x-ray film in the possession of Malcolm Grow Medical Center, the plaintiff shall request monetary redress for the negligent reading of my late husband's medical records for the 1986 issue.

Under Federal Law, the plaintiff shall request monetary relief for my late husband's pain and suffering as a result of Malcolm Grows negligence when the original 1986 radiology film was read an/or recorded showing a material error was found. Remedy under law shall be based on facts that support: Malcolm Grow made a material error on the 1986 radiology report and that this error caused my late husband additional suffering while the error found is shown to remain on his medical records. Showing in 1986 my late husband sought medical treatment for the pain and suffering found; and that when he went to Malcolm Grow for medical assistance because he was coughing up blood, the medical records for this disputed 1986 medical finding shows his chest was "Normal".

Whereby finding the original 1986 radiology report in my husband's medical records shows: In 1986 his chest was "Normal", even though, Doctor Freedman's medical report shows a contradiction of facts that support the existence of nodular densities that may be shown based on a medical review of the corrected medical record that his lung was suspicious of a pre-existing condition that led to the development of cancer. Doctor Freedman report states the two 1 cm nodular densities are consistent with nipple shadows, although films with nipple markers would be valuable in confirming this.

Thus the facts on the medical record show the entire medical record should be evaluated after AFBCMR corrects the original 1986 radiology report. So that justice can be served for facts before this Court that show: The plaintiff under Title 10 of the U.S. Code section 1552, requested a medical records correction. And that due process for the plaintiff's request is not served when the factual medical data is not recorded on the medical record. Thereby showing: The uncorrected data found for Malcolm Grows original 1986 radiology report shows AFBCMR has not made its determination about the medical facts for the 1986 issue based on the corrected medical data.

Wherefore, the plaintiff shall seek monetary redress for Hartwell E. Edwards' loss wages showing, he was unable to go to work as a result of the cancer, which took his life. Thereby showing the pain and suffering experienced by my late husband caused his family to suffer undue hardship prior to Malcolm Grow discovering the cancer, which caused death.

Under law the plaintiff shall claim monetary redress for AFBCMR's negligence for the 1986 issue, showing, the family of Hartwell E. Edwards suffered both mentally and physically while watching my husband suffer, to find, AFBCMR omitted a finding for his 1986 radiology report. Redress for the Edwards family shall be based on facts that show we had no way of knowing the year prior to discovery of my late husband's cancer, Malcolm Grow omitted medical facts that should be recorded on his medical records, and that, this omission may support medical facts that show, once the 1986 radiology report is corrected: My husband developed a pre-existing condition that may have led to the development of the cancer that caused his death.

The plaintiff shall seek compensation from AFBCMR in the amount of 3.5 million dollars for medical negligence should the U.S. Court determine under the Order for further proceedings AFBCMR omitted material medical facts that caused additional pain and suffering to the Edwards family. And for medical facts that show, Hartwell E. Edwards did not receive the medical care needed in 1986; because Malcolm Grow was not aware of the continued existence of nodular densities that may or may not represent nipple shadows. Whereby, Doctor Freedman's medical report shows, he could not evaluate the shadows found; because Mr. Edwards was deceased in 1990 when the plaintiff received the finding for duplicated 1986 chest x-ray film.

Encls (3)
1. Malcolm Grows Original 1986 Radiology Report
2. Doctor Freedman's 1990 radiology report
3. U.S. District Court's Order to Close Entitled Case

Respectively Submitted

/s/ ____________________
Myra R. Edwards
1120 Windemere Court
Fort Washington, MD
20744
703-806-3447

CERTIFICATION OF SERVICE

I HEREBY CERTIFY, that on this 5th day of November 1996, this "Appeal for the U. S. Court's Order to Close the Plaintiff's Entitled Case" is being sent Clerk, The United States District Court For The District Of Maryland by certified mail, article number P 597 062 797; to: the Department of the Air Force, AFBCMR at 1535 Command Drive, EE Wing, 3rd Floor, Andrews AFB, Maryland 20331-7002 by first class mail, postage paid by Myra R. Edwards; to: 11 MSS/IMS (FOIA) 1000 Air Force Pentagon, Washington, DC 20330-1000 by first class mail, postage paid by Myra R. Edwards; to: SAF/MIBR 550 C Street West, Suite 40, Randolph AFB, TX 78150-4742; and to: Lynn A. Battaglia, United States Attorney, Attn: Kaye A. Allison Assistant United States Attorney, Bar No. 09084, at 604 United States Courthouse, 101 West Lombard Street, Baltimore, Maryland 21201 by certified mail, article number Z 058 863 013.

Signed:

/s/ ____________________
Myra R. Edwards

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS
Plaintiff,
Civil Cases Closed:
DKC-95-3115

v.

DEPARTMENT OF THE AIR FORCE
AFBCMR, et al.

MOTION

Ms. Myra R. Edwards, Comes before this Court by way of MOTION to request the release of all records for civil claims: DKC-95-3115 to United States Court of Federal Claims at 717 Madison Place NW, Washington, DC 20005.

Ms. Edwards MOTION is for the release of records that will be used to affirm Federal Violations. Claim before Judge Wiese (United States Court of Federal Claims) docket number 98-930C, affirms Malcolm Grow USAF Medical Center, Department of the Air Force and AFBCMR destroyed the 1986 Lateral X-ray film in 1994. The civil claim before this Court shows Plaintiff was denied the correction request (AFBCMR denied correction in 1994) with issues under Federal Law being AFBCMR assert Plaintiff did not file the application in a timely manner.

DKC-95-3115 affirms Ms. Edwards brought claim before U.S. District Court of Maryland seeking disclosure of certain documents pursuant to the Freedom of Information Act (FOIA). The civil records affirms U.S. District Court of Maryland did not rule in favor of Ms. Edwards with the civil record affirming no release of records (1986 X-ray film) for the remanded civil claim DKC-97-1533.

Ms. Edwards MOTION is for the release of records before United States District Court of Maryland with issue under Federal Law being AFBCMR did not release material evidence to affirm the 1986 Lateral X-ray film was destroyed in 1994. The civil record shows AFBCMR states for the remanded civil claim (DKC-97-1533): Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. AFBCMR also affirmed in 1997 in the Addendum to Record of Proceedings: Applicant filed suit in the District Court of Maryland seeking documents pursuant to Freedman of Information Act. Civil claim 98-930C shows Ms. Edwards received notice from United Courts of Federal Claims for release of records she was seeking through United States District Court of Maryland. United States Court of Federal Claims asked AFBCMR to release the 1986 Lateral X-ray film used before United States District Court of Maryland to affirm Major Whigham did not error in 1986 with record affirming Ms. Edwards correction claim was denied.

The civil record before United States Court of Federal Claims (98-930C) shows the 1986 Lateral X-ray film was destroyed in 1994. See Department of Air Force and AFBCMR 31 March 1997 Addendum to Record of Proceedings to affirm AFBCMR understood the issues of law for correction. AFBCMR affirm 31 March 1997, Ms. Edwards concern for correction is a diagnostic error occurred in 1986 with the record affirming Major Whigham chose to omit 1986 radiographic facts under request for correction. The civil record before United States District Court of Maryland affirm Ms. Edwards was denied correction of the 1986 PA Chest X-ray medical report with issues under law being Major Whigham choose to omit 1986 radiographic facts found by reviewing the 1986 PA Chest X-ray film in 1990. Civil claim DKC-953115 shows Ms. Edwards' correction claim was remanded with issue of law being Applicant did not file the application for correction in a timely manner. Ms. Edwards affirmed she did not violate statute in 1994 with AFBCMR affirming: The application was not timely filed. DKC-95-3115 shows the civil claim was remanded to resolve statute violations with Ms. Edwards civil claim affirming (DKC-97-1533) United States District Court of Maryland did not rule Defendants violated statute in 1994.

See the following enclosures to affirm the Board concluded the correction claim was not filed timely (with issue of law being Ms.

Edwards' violated statute.

1. AFBCMR letter dated 11 October 1994, signed by Raymond H. Weller, Chief Examiner Air Force Board for Correction of Military Records.
2. Record of Proceedings Air Force Board for Correction of Military Records, docket number 9302789, dated 11 October 1994, signed by Panel Chairman.
3. AFBCMR letter dated November 22, 1994, signed by Mack M. Burton, Acting Executive Director Air Force Board for Correction of Military Records.
4. AFBCMR Addendum To Record of Proceedings for Correction of Military Records, docket number 9302789, dated March 31, 1997, signed by Henry C. Saunders.

Ms. Edwards MOTION is for release of records adjudicated before United States District Court of Maryland with issue of law now being: Defendants affirm there is no injustice data on the civil record to warrant correction of Major Whigham's 1986 radiographic omission. With facts before United States Court of Federal Claims showing AFBCMR destroyed the 1986 Lateral X-ray film in 1994, the same year AFBCMR affirmed Ms. Edwards did not file the correction application in a timely manner. With the civil record before United States District Court of Maryland affirming Ms. Edwards received no merit for AFBCMR wrongful 1994 correction claims.

Ms. Edwards is before the Court requesting the release of all records' for civil claim DKC-95-3115, 30 that, United States Court of Federal Claims has knowledge of proceedings. Ms. Edwards' affirm: The civil record before United States District Court of Maryland shows Defendants did not tell the Court or Ms. Edwards the 1986 X-ray film was destroyed in 1994. The civil record shows Plaintiff case centers on facts for the 1986 PA Chest and Lateral X-ray film and reports for this film with the remanded civil claim not affirming the 1986 Lateral X-ray film was destroyed in 1994. AFBCMR asserted the Lateral X-ray film (material evidence/substantive evidence) affirms under Federal Law there is no injustice data to warrant correction of Major Whigham 1986 radiographic omission (DKC-95-3115/DKC-97-1533). The remanded civil claim also shows no records were released to affirm Ms. Edwards violated statue in 1994. The civil record before United States District Court of Maryland shows AFBCMR assert Plaintiff did not file the correction application in a timely manner. See record before United States District Court of Maryland DKC-95-3115/DKC-97-1533 to affirm the material evidence of claim was statute violations to affirm Ms. Edwards did not file the correction claim in a timely manner.

Ms. Edwards prays, United States District Court of Maryland will grant this MOTION for release of records. With issue of law before Judge Wiese, United States Court of Federal Claims, docket number 98-930C showing: Malcolm Grow USAF Medical Center, Department of the Air Force and AFBCMR destroyed the 1986 Lateral X-ray film long before United States District Court of Maryland remanded civil claim DKC-95-3115. Ms. Edwards' civil claim before this Court DKC-95-3115 shows there are no records to affirm substantive evidence for destruction of the 1986 X-ray film in 1994. And that Ms. Edwards did not know the 1986 X-ray film was destroyed in 1994 until she brought claim before United States Court of Federal Claims 98-930C.

Evidence presented by AFBCMR shows Ms. Edwards' violated statute in 1994 with Ms. Edwards claim for correction being: She filed the correction request under the provisions of Title 10 U.S. Code Section 1552 in 1992. The enclosed letter from WHMC/PSRD dated 30 September 1993 signed by Thomas M. Dykes, Major USAF, MC Chief, Thoracic Radiology Section Diagnostic Radiology Services shows Department of the Air Force reviewed the record with issue under law being correct Major Whigham radiographic omission. See enclosed letter from WHMC/PSRD. WHMC/PSRD letter affirms Department of Air Force, Malcolm Grow USAF Medical Center for Department of the Air Force did not review the 1986 PA Chest and Lateral X- ray film for resolution of claim. The civil record affirms Major

Whigham omitted a radiographic finding in 1986 that Ms. Edwards found out about in 1990 after Doctor Freedman reviewed the 1986 PA Chest X-ray film to find nodular densities/nipple shadows. WHMC/PSRD letter affirms Department of Air Force and/or AFBCMR did not resolve material facts for the central question that centers on a discrepancy in interpretation. Court records affirm Ms. Edwards filed claim to resolve the discrepancy in interpretation (Correction of the Military Record) under Federal Law October 28, 1992.

To affirm the 1986 PA Chest and Lateral X-ray film was destroyed in 1994, Ms. Edwards is enclosing:

1. United Department of Justice letter dated March 2, 1999, signed by Monica J. Palko, Trial Attorney Commercial Litigation Branch Civil Division
2. Department of the Air Force, Air Force Legal Services Agency letter from AFLSA/JACL dated 24 February 1999 signed by Stephen J. Ehlenbeck, Major, USAF Trial Attorney with attachments for destruction of the 1986 PA Chest and Later X-ray film under AFMAN 37-139, Table 44-3, Rules and 10.
3. Department of the Air Force 11th Wing letter dated 10 August 2000 from 11 CS/SCS (FOIA). This FOIA letter affirms facts released by AFLSA/JACL for destruction of the 1986 PA Chest and Lateral X-ray film in 1994.

Court records before U.S. District Court of Maryland affirm Ms. Edwards under Title 10 U.S. Code Section 1552; 28 October 1992 requested correction of Major Whigham 1986 omission. Civil Claim DKC-95-3115 affirms Plaintiff case was remanded with issue of law for correction centering around, AFBCMR claims under statute. Civil claim DKC-953115 shows AFBCMR asserts Plaintiff knew the essential facts, which gave rise to the application, long before the asserted date of discovery. Civil records for DKC-95-3115 shows AFBCMR released no records to show Ms. Edwards had knowledge of facts in admission for each correction denial.

Ms. Edwards' affirm she only had knowledge of facts for the 1986 omission and facts affirming Major Whigham chose to omit the 1986 radiographic finding, when: (1) She had the released 1986 PA Chest X-ray film examined in 1990 by Doctor Freedman. (2) She brought claim before United States District Court of Maryland under FOIA with the Court remanding the civil claim based on statute violations with facts for each correction denial continuing to be unresolved. (3) She brought claim before United States Court of Federal Claims with facts before this Court being AFBCMR destroyed the 1986 PA Chest and Lateral X-ray film in 1994.

Ms. Edwards affirm approximately 2-years after receiving Doctor Freedman written medical report in 1990, she requested correction of the military record in 1992. Doctor Freedman received copies of the actual 1986 PA Chest X-ray film. Doctor Freedman's 1990 medical report shows Major Whigham failed to annotate in the written medical record a finding for "Nodular Densities/Nipple Shadows"' with claim by AFBCMR being: Ms. Edwards did not file the correction application in a timely manner. Civil claim 98930C shows United States Court of Federal Claims requested the release of the Lateral X-ray film and records for these films with facts before this Court being the 1986 X-ray film was destroyed in 1994. The civil record also shows WHMC/PSRD in 1993 reviewed records under request for correction with record of finding for this review being: Department of the Air Force and AFBCMR did not release the 1986 X-ray film to affirm facts found by review of the 1986 medical records. WHMC/PSRD affirm there is a discrepancy in interpretation. Records for the civil claim shows Malcolm Grow USAF Medical Center and AFBCMR had knowledge of the discrepancy in interpretation prior to the 1986 X-ray film and records for these films being destroyed in 1994.

Ms. Edwards affirm the MOTION for release of records shows the 1986 Lateral X-ray film and records for these films was destroyed the year AFBCMR affirmed Ms. Edwards did not file a timely correction claim. The civil record for DKC-95-3115 shows Ms. Edwards' correction claim filed within statute was remanded.

With issues under Federal Law for each unlawful correction denial showing: Regardless of facts for Major Whigham medical omission the claim before the Court is Ms. Edwards' violated statute with no record of this fact released under Federal Law used to deny Ms. Edwards lawful correction request. The civil record affirms Department of Air Force and AFBCMR never reviewed the 1986 PA Chest and Lateral X-ray film to affirm before United States District Court of Maryland there's no injustice data. At issue, Ms. Edwards' shall pursue the evidence of record to affirm Federal Violations before United States Court of Federal Claims.

The civil record before U.S. District Court of Maryland affirms: Ms. Edwards did not receive records or copies of the 1986 Lateral X-ray film taken on the same date as the PA Chest X-ray film released to Doctor Freedman. The civil record before U.S. District Court of Maryland affirms this Court Ruled: Major Whigham did not error when choosing to omit a radiographic fact for the written Medical Record with claim under Federal Law being correction of Major Whigham's 1986 medical omission.

Ms. Edwards request the Court to send written notification or a fax message to Plaintiff to affirm or deny this MOTION for release of records (DKC-95-3115) to United States Court of Federal Claim. Ms. Edwards mailing address: 1120 Windemere Court, Fort Washington, MD 20744. Fax telephone # 1-775-535-3822. Daytime telephone number 703-325-4951.

Sincerely,

/s/ ____________
Myra R. Edwards

Enclosures (9)
1. WHMC/PSRD letter dated
30 September 1993
affirms discrepancy
in interpretation with
no review of the 1986 X-ray film
2. AFBCMR letter dated 11 October 1994
to affirm the application was not timely filed

3. AFBCMR Record of Proceedings dated 11 October 1994 Used to Affirm the applicant did not file in a timely manner
4. AFBCMR letter dated 22 November 1994 also used to affirm the application was not Filed in a timely manner
5. US Department of Justice Letter dated March 2, 1999
6. AFLSA/JACL letter dated 24 February 1999 to affirm the 1986 PA Chest and Lateral X-ray film and records for these film was destroyed in 1994
7. 11 CS/SCS (FOIA) dated 10 August 2000 affirming destruction of the 1986 PA Chest and Lateral X-ray film
8. Transcripts from Untied States Court of Federal Claims, Docket No. 98-930C
9. Addendum To Record of Proceedings, for Correction of Military Records, dated March 31, 1994

CC:
Department of the Air Force
Headquarters Air Force
Military Personnel Center
Randolph Air Force Base, TX 78150

Department of the Air Force
AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews Air Force Base, MD 20762-7002
Department of the Air Force

Legal Office
Malcolm Grow USAF Medical Center
Andrews Air Force Base, MD 20331-5300

SAF/GCA
1740 Air Force Pentagon
Washington, DC 20330-1740

Honorable Paul Sarbanes
United States Senator
Tower 1, Suite 1010
100 S. Charles Street
Baltimore, Maryland 21201-2700

Lynne A. Battaglia
United States Attorney
ATTN: Larry Adams
Assistant States Attorney
6625 United States Courthouse 101 W. Lombard Street
Baltimore, MD 21201

Honorable John Ashcroft
Attorney General
Department of Justice
10th and Constitution Avenues, NW
Washington, DC 20530

CERTIFICATION

I, Myra R. Edwards affirm the enclosed 'records are copies of records released by Department of the Air Force and AFBCMR and have not been changed in any way from date of receipt. The enclosed documents are being sent by first class mail postage paid by Myra R. Edwards to all named parties on 5 December 2001. This MOTION is for the release of records used to adjudicate the Correction Claim before United States District Court of Maryland (DKC-95-3115). Request all records used to adjudicate this claim be sent to: United States Court of Federal Claims so that the record in its entirety can be reviewed by Judge Wiese who asked Department of the Air Force and AFBCMR to locate the 1986 X-ray film and records for this film. See Ms. Palko letter to Judge Wiese for location of the 1986 lateral chest X-rays. With record before US District

Court of Maryland affirming Ms. Edwards correction claim centers around material facts for the 1986 lateral Chest X-rays and records for this X-ray film. This MOTION is for the release of all records in their entirety to U.S. Court of Federal Claims based on Judge Wiese request (civil claim 98-930C) for location of the 1986 X-ray film. Ms. Edwards civil claim before United States Court of Federal Claims is for final determination under Federal Law as to whether or not Department of the Air Force and AFBCMR committed statute violations when wrongfully denying correction in 1994. With claim under statute being Ms. Edwards did not file in a timely manner and record before United States Court of Federal Claims affirming the 1986 X-ray film and all records for these film were destroyed in 1994. This MOTION is for the release of all records civil claims DKC95-3115 to U.S. Court of Federal Claims.

Signed:

/s/ _____________
Myra R. Edwards

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS
Plaintiff, Civil Cases Closed:
DKC-97-1533
v.

DEPARTMENT OF THE AIR FORCE
AFBCMR, et al.

MOTION

Ms. Myra R. Edwards, Comes before this Court by way of MOTION to request the-release of all records for civil claims: DKC-97-1533 to United States Court of Federal Claims at 717 Madison Place NW, Washington, DC 20005.

Ms. Edwards MOTION is for the release of records that will be used to affirm Federal Violations. Claim before Judge Wiese (United States Court of Federal Claims) docket number 98-930C, affirms Malcolm Grow USAF Medical Center, Department of the Air Force and AFBCMR destroyed the 1986 PA Chest and Lateral X-ray film in 1994.

The civil claim before this Court shows Plaintiff was denied the correction request after U.S. District Court of Maryland remanded the civil claim with issue of law being timeliness. AFBCMR affirmed Plaintiff had knowledge of facts, which gave rise to the correction application more than 3-years with record before the Court affirming Plaintiff requested correction 28 October 1992 after receiving Doctor Freedman's 1990 medical finding for the 1986 PA Chest X-ray film. Facts for the remanded civil claim also shows: AFBCMR affirmed Ms. Edwards correction claim was for concerns which show a chronic condition existed with issue of law before the Court being: Major Whigham chose to omit radiographic facts that Ms. Edwards under Federal Law asked be corrected. The civil record affirms AFBCMR did not release any records to affirm Ms. Edwards had knowledge of the omission before receiving Doctor Freedman 1990 medical finding for the 1986 PA Chest X-ray. Thus MS. Edwards MOTION is for the release of records to United States Court of Federal Claims to affirm AFBCMR never released records before United States District Court of Maryland to affirm the 1986 Lateral X-ray film was destroyed in 1994. With the correction denial in 1997 affirming: AFBCMR state they are not persuaded that a chronic condition existed since the Lateral X-ray taken on the same date did not reveal a finding for nodular densities/nipple shadows. Ms. Edwards affirm, the remanded civil record before the Court affirms AFBCMR never reviewed the 1986 Lateral X-ray film with issue under Federal Law affirming the 1986 Lateral X-ray film was destroyed in 1994. See WHMC/PSRD 30 September 1993 medical finding and transcripts for civil claim 98-930C.

. DKC-97-1533 affirms AFBCMR did not release records to deny Plaintiff's affirmation for date of discovery. AFBCMR affirmed in its March 31, 1997 Addendum To Record of Proceedings that insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. Court records affirm there is no release of records for review of the correction claim. With issue of law being Ms. Edwards was denied correction in 1994 based on AFBCMR affirming the application was not filed in a timely manner with no facts presented for the 1986 X-ray film being destroyed by AFBCMR under AFMAN 37-139, Table 44-3, Rules 8 and 10.

Civil Claim DKC-95-1533 shows the Court ruled in favor of Defendants with Ms. Edwards not receiving any merit under Federal Law for AFBCMR wrongful assertions used to deny correction of the medical record in 1994 and 1997 with issues being statute violations. AFBCMR affirmed in its Addendum to Record of Proceedings dated March 31, 1994 that Plaintiff filed suit in the District Court of Maryland seeking disclosure of documents pursuant to the Freedom of Information Act (FOIA). The civil record (DKC-97-1533) before U.S. District Court of Maryland affirms no records were released for destruction of the 1986 Lateral X-ray film. AFBCMR Addendum to Record of

Proceedings, dated 31 March 1997 affirms Ms. Edwards is seeking correction of her late husband's 1986 military records to show that a diagnostic error occurred based on a number of findings for nodular densities nipple shadows except for the 1986 uncorrected medical record. The civil record before United States Court of Federal Claims (docket number 98-930C) affirms the 1986 Lateral X-ray film (material evidence for Plaintiffs claim) was destroyed by AFBCMR in 1994 with the record before United States District Court of Maryland showing no review for the 1986 Lateral X-ray film. The civil record before this Court (DKC-97-1533) affirms no records were released for destruction of the 1986 Lateral X-ray film. With issue under Federal Law being resolution/determination if a diagnostic error occurred based on medical facts released by other radiograph records. AFBCMR assertions for the omission (uncorrected medical records) in 1997, there is no injustice data on the civil record with Ms. Edwards discovering (98-930C) the 1986 X-ray film was destroyed in 1994.

The civil record before United States District Court of Maryland shows: Major Whigham chose to omit a radiographic finding for nodular densities in 1986 for the written PA Chest medical record. Ms. Edwards MOTION is for the release of records for DKC-97-1533 to affirm Federal Violations. With claim before the court being: Ms. Edwards violated statute in 1994; however facts for the correction denial affirms the 1986 Lateral X-ray film was destroyed in 1994 without review for resolution of WHMC/PSRD 1993 finding for discrepancy in interpretation. AFBCMR affirmed (DKC-97-1533) remanded civil claim, Major Whigham did not error and that the 1986 Lateral X-ray film affirms there is no injustice data on the civil record for the 1994 and 1997 correction denials.

AFBCMR affirmed in its Addendum to Record of Proceedings dated 31 March 1997 that the Board did not find it unusual that Malcolm Grow Medical Center did not note the presence of nodular densities/nipple shadows on the PA view of the 1986 X-ray film. Since, the X-ray film taken on the same date from the lateral view did not reveal the nodular densities/nipple shadows. DKC-97-1533 shows AFBCMR did not release records for the 1986 Lateral X-ray film to show destruction in 1994. The civil record affirms no release of X-ray film in 1993 to WHMC/PSRD with assertions being: Based on evidence before us, we find no basis to conclude that a chronic condition existed prior to the member's retirement from the Air Force.

The civil record shows AFBCMR had knowledge of facts for the central correction question in 1993 with WHMC/PSRD affirming no review of the 1986 PA Chest and Lateral X-ray film with the correction record affirming the question for correction centers on a discrepancy in interpretation for the 1986 radiographs. See enclosure from WHMC/PSRD, to affirm Department of the Air Force reviewed the medical facts for correction of the medical record in 1993; before the 1986 X-ray film was destroyed in 1994. Ms. Edwards affirm the civil record before United States District Court of Maryland shows AFBCMR knew the 1986 Lateral X-ray film was destroyed in 1994 with claim for the correction denial to the Plaintiff being statute violations in 1994.

The enclosed record from Ms. Palko, Trial attorney for (Department of Air Force and AFBCMR) affirms a response for Judge Wiese's request release of the 1986 Lateral X-ray film (civil claim 98-930C). Judge Wiese requested the release of records for the 1986 X-ray film; Court records shows Ms. Edwards expected to receive copies of the film based on AFBCMR affirming review in 1997. With determination before United States District Court of Maryland being no injustice data exists for denial of the civil correction claim. At issue: Department of Air Force and AFBCMR claimed review of the 1986 Lateral X-ray film before United States District Court of Maryland in its Addendum to Record of Proceedings, dated 31 March 1997. AFBCMR affirmed: Major Whigham did not error in 1986 when omitting a written finding for nodular densities/nipple shadows (DKC-97-1533 and DKC-98-4190). Ms. Edwards MOTION is for the release of records (DKC-97-1533) that shall be used to affirm before United States Court of Federal Claim AFBCMR released no records under the FOIA claim for destruction of the 1986 Lateral X-ray film taken on the same date as the PA Chest X-rays. With issue of law being affirmation that Major Whigham did not error when omitting medical facts for the 1986 military record. Ms. Edwards states the Omission (no medical facts for finding nodular densities/nipple shadows) creates the error. With issue of law being the record with omitted medical facts is misleading; thereby making the medical findings for review of the written record inaccurate (see WHMC/PSRD 1993 medical finding and findings from various other medical professional who reviewed Malcolm Grows' uncorrected 1986 medical records). Ms. Edwards comes before the Court to state: No one can rely on the accuracy of the information found by review of Malcolm Grows medical records. With issue being correction of Major Whigham 1986 military medical omission, and Court records affirming the 1986 X-ray film was destroyed in 1994. Claim by AFBCMR for DKC97-1533: Major Whigham chose to omit a medical fact that Ms. Edwards' asked be corrected under the provisions of Title 10 U.S. Code 1552, 28 October 1992.

The civil record (DKC-97-1533) before U.S. District Court of Maryland affirms: Ms. Edwards did not receive records or copies of the 1986 Lateral X-ray film taken on the same date as the PA Chest X-ray film released to Doctor Freedman. The correction issues under law shows Ms. Edwards requested correction of Major Whigham 1986 medical omission for the written 1986 radiographic medical record with claim by AFBCMR for the correction request being Ms. Edwards did not file the correction application in a timely manner.

Ms. Edwards MOTION is for the release of records to affirm Court proceedings adjudicated by United States District Court of Maryland. The records under MOTION for release will be used to affirm before United States Court of Federal Claims AFBCMR did not release records/documents to affirm the 1986 X-ray film was destroyed in 1994 (civil claim DKC-97-1533). With the civil record showing the Court Ruled (Remanded civil claim DKC-97-1533) against Ms. Edwards to affirm no injustice data exists for the 1994 and 1997 correction denials.

Ms. Edwards request the Court send written notification or a fax message to Plaintiff to affirm or deny this MOTION for release of records (DKC-97-1533) to United States Court of Federal Claim. Ms. Edwards mailing address: 1120 Windemere Court, Fort Washington, MD 20744, Fax telephone # 1-775-535-3822, Daytime telephone number 703-325-4951.

Sincerely,

/s/ ____________
Myra R. Edwards

Enclosures (7)
1. WHMC/PSRD letter dated
30 September 1993
affirms discrepancy
in interpretation with
no review of the 1986 X-ray film
2. AFBCMR letter dated 22 November
1994 to affirm the application was not
Filed in a timely manner
3. US Department of Justice
Letter dated March 2, 1999
4. AFLSA/JACL letter dated 24 February 1999
to affirm the 1986 PA Chest and Lateral
X-ray film and records for these film was
Destroyed in 1994
5. 11 CS/SCS (FOIA) dated 10 August 2000
affirming destruction of the 1986 PA Chest and
Lateral X-ray film
6. Transcripts from Untied States Court of
Federal Claims, Docket No. 98-930C
7. Addendum To Record of-Proceedings, for
Correction of Military Records, dated March 31, 1994

CC:
Department of the Air Force
Headquarters Air Force
Military Personnel Center
Randolph Air Force Base, TX 78150

Department of the Air Force
AFBCMR

1535 Command Drive
EE Wing, 3 Floor
Andrews Air Force Base, MD 20762-7002

Department of the Air Force
Legal Office
Malcolm Grow USAF Medical Center
Andrews Air Force Base, MD 20331-5300

SAF/GCA
1740 Air Force Pentagon
Washington, DC 20330-1740

Honorable Paul Sarbanes
United States Senator
Tower 1, Suite 1010
100 S. Charles Street
Baltimore, Maryland 21201-2700

Lynne A. Battaglia
United States Attorney
ATTN: Larry Adams
Assistant States Attorney
6625 United States Courthouse
101 W. Lombard Street
Baltimore, MD 21201

Honorable John Ashcroft
Attorney General
Department of Justice
10th and Constitution Avenues, NW
Washington, DC 20530

CERTIFICATION

I, Myra R. Edwards affirm the enclosed records are copies of records released by Department of the Air Force and AFBCMR and have not been changed in any way from date of receipt. The enclosed documents are being sent by first class mail postage paid by Myra R. Edwards to all named parties on 5 December 2001. This MOTION is for the release of records used to adjudicate the Correction Claim before United States District Court of Maryland (DKC-97-1533). Request all records used to adjudicate this claim be sent to: United States Court of Federal Claims so that the record in its entirety can be reviewed by Judge Wiese who asked Department of the Air Force and AFBCMR to locate the 1986 X-ray film and records for these film. See Ms. Palko letter to Judge Wiese for location of the 1986 lateral chest X-rays. With record before US District Court of Maryland affirming Ms. Edwards correction claim centers around material facts for the 1986 lateral Chest X-rays and records for this X-ray film. This MOTION is for the release of all records in their entirety to U.S. Court of Federal Claims based on Judge Wiese request (civil claim 98-930C) for location of the 1986 X-ray film. Ms. Edwards civil claim before United States Court of Federal Claims is for final determination under Federal Law as to whether or not Department of the Air Force and AFBCMR committed statute violations when wrongfully denying correction in 1994. With claim under statute being Ms. Edwards did not file in a timely manner and record before United States Court of Federal Claims affirming the 1986 X-ray film and all records for these film were destroyed in 1994. This MOTION is for the release of all records civil claims DKC99-1533 to U.S. Court of Federal Claims.

Signed: /s/ __________
Myra R. Edwards

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS
Plaintiff, Civil Cases Closed:
DKC-98-4190
v.
DEPARTMENT OF THE AIR FORCE
AFBCMR, et al.

MOTION

Ms. Myra R. Edwards, Comes before this Court by way of MOTION to request the release of all records for civil claims: DKC-95-3115 to United States Court of Federal Claims at 717 Madison Place NW, Washington, DC 20005.

Ms. Edwards MOTION is for the release of records that will be used to affirm Federal Violations. Claim before Judge Wiese (United States Court of Federal Claims) docket number 98-930C, affirms Malcolm Grow USAF Medical Center, Department of the Air Force and AFBCMR destroyed the 1986 Lateral X-ray film in 1994. With claim before United States District Court asserting Ms. Edwards did not file the application timely. The civil record before United States Court of Federal claims shows the 1986 X-rays affirmed for review (remanded civil claim) before United States District Court of Maryland was destroyed in 1994, which is the same year AFBCMR affirmed Ms. Edwards did not file the correction claim in a timely manner.

Ms. Edwards affirm material relevant facts for destruction of the 1986 X-ray film was withheld from the civil record with Ms. Edwards correction claim being barred under United States District Court of Maryland ORDER of Res Judicata filed 29 January 1999. DKC-98-4190 affirms Plaintiffs claim was barred from litigation based on United States District Court of Maryland opined that civil claims (DKC-95-3115 and DKC-97-1533) has already been finally litigated by this Court. However, the civil record before United States Court of Federal Claims shows: AFBCMR violated statute when affirming Ms. Edwards 1992 correction claim was not filed in a timely manner.

The civil record affirms AFBCMR did not review the 1986 X-ray film in 1993 and that the absence of the X-rays impairs the medical finding. The civil record also affirms the 1986 X-ray film was not destroyed until 1994. The same year Ms. Edwards was denied correction with claim being the application was not timely filed. Thus the question to be answered by United States Court of Federal Claims is as follows: Should Ms. Edwards be denied all merit with the record affirming the correction application was filed within statute? And should Ms. Edwards be denied correction of the 1986 military record with facts in admission for the 1986 PA Chest radiographic report affirming Major Whigham chose to omit radiographic facts (DKC-97-1533) that Plaintiff asked be corrected 28 October 1992? Finally, should Ms. Edwards' correction claim be barred under the Court's ORDER of Res Judicata with facts under Federal Law affirming: Malcolm Grow USAF, and AFBCMR destroyed the 1986 X-ray film in 1994 without review as shown by WHMC/PSRD letter dated 30 September 1993 and AFLSA/JACL letter dated 24 February 1999? The letter from 11 CS/SCS dated 10 August 2000 affirms AFLSA/JACL finding for destruction of the 1986 X-rays in 1994. The civil record before United States Court of Federal Claims (98930C) with hearing February 18, 1999 affirms facts for destruction of the 1986 X-ray film.

Ms. Edwards hearing before United States Court of Federal Claims was heard after United States District Court of Maryland barred Ms. Edwards correction claim under the ORDER of Res Judicata. Records before United States District Court of Maryland affirm Ms. Edwards filed for concurrent Jurisdiction of the Correction claim before United States District Court of Maryland barred the correction claim under the ORDER of Res Judicata. The civil claim before United States District Court of Maryland shows Ms. Edwards affirmed Defendants violated Federal Law in 1994 with claim being Ms. Edwards did not file the correction claim in a timely manner. United States District Court of Maryland opined: Ms. Edwards' response (Paper No. 5) was difficult to decipher. DKC-98-4190 affirms United States District Court of Maryland understood Ms. Edwards continue to argue that the Government (Malcolm Grow, Department of the Air Force and AFBCMR erred in 1994 and 1997 with issue being the wrongful correction denial. With the record affirming no written entry in the medical records for nodular densities/nipple shadows found as a medical fact upon review of the 1986 PA Chest X-ray film.

Ms. Edwards' affirm the civil record before United States District Court of Maryland shows the Plaintiff has consistently told the Court AFBCMR violated Federal Law under statute for correction of the late Hartwell E. Edwards 1986 radiographic film report. The civil record before United States Court of Federal Claims affirm AFBCMR destroyed the 1986 Lateral X-ray film in 1994. With no record of fact for the destruction of the 1986 X-ray film before United States District Court of Maryland who ruled civil claim DKC-98-4190 is identical to DKC-97-1533.

Civil claim DKC-98-4190 shows Ms. Edwards filed claim for concurrent jurisdiction with claim before United States District Court of Maryland and United States Court of Federal Claims being Malcolm Grow USAF Medical Center and AFBCMR Federal violations under statute used to affirm: Ms. Edwards' did not file the correction claim in a timely manner. The civil record affirms United States District Court of Maryland ruled civil claim DKC-98-4190 is identical to civil claim DKC-97-1533. The civil record affirms this Court ruled to bar the correction claim 11 January 1999. With the civil record affirming Ms. Edwards assert Defendants violated Federal Law for the correction denials. The civil record affirms approximately one month after United States District Court of Maryland barred the civil claim Judge Wiese requested release of records used by AFBCMR to affirm (remanded civil claim) there is no injustice data on the civil record used to deny Ms. Edwards correction claim. The civil claim before Judge Wiese affirm this Court requested the release of X-ray film used to affirm no injustice data exists. AFBCMR affirmed in the 1997 Addendum to Record of Proceedings, the 1986 Lateral X-ray film taken on the same date as the PA Chest X-rays affirm: Major Whigham did not omit radiographic facts under request for correction. Civil claim DKC-97'-1533 shows AFBCMR affirm the 1986 Lateral X-ray film (not released to the Court or Ms. Edwards) proves Major Whigham did not error when omitting medical facts for the 1986 PA Chest X-ray film report. See civil claims DKC-95-3115, DKC-97-1533 and DKC-98-4190 to affirm no records have been released for the 1986 Lateral X-ray film with claim for correction being Major Whigham 1986 radiographic omission.

Ms. Edwards MOTION before this Court is for the release of records (DKC-98-4190) to United States Court of Federal Claims. With issue of Law continuing to be Department of the Air Force and AFBCMR violated Federal Law (Federal Statutes) in 1994 and 1997. The civil record before United States District Court of Maryland shows Ms. Edwards filed the correction application in a timely manner, but the Court' never ruled in favor of Ms. Edwards. The civil record before United States Court of Federal Claims shows AFBCMR destroyed all evidence (1986 X-ray film in 1994). Thus, Ms. Edwards MOTION is for the release of records that will be used to affirm AFBCMR did not release under FOIA (DKC-95-3115, DKC-97-1533 and DKC-98-4190) records to show the 1986 X-ray films were destroyed under AFMAN 37-139, Table 44-3, Rules 8 and 10 in 1994. The civil record before United States District Court of Maryland shows AFBCMR used the uncorrected medical facts with no finding for review of the 1986 Lateral X-ray film to affirm: There is no injustice data on the civil record to warrant correction of Major Whigham admitted omission.

Civil claim DKC-98-4190 shows United States District Court of Maryland Ruled Ms. Edwards civil claim for correction of the 1986 military record is frivolous, sham, vexatious, or brought in bad faith.

Ms. Edwards affirms she has not wasted the Courts time.

The civil record affirms: Before bringing the correction claim to United States District Court of Maryland, Ms, Edwards filed the appropriate documents for having her late husbands medical records corrected. Ms. Edwards affirm, she wrote Department of the Air Force for correction, see WHMC/PSRD responsive letter dated 30 September 1993. WHMC/PSRD letter affirms Ms. Edwards concerns for correction of the military record and shows Department of the Air Force and AFBCMR ignored Federal Law requiring resolution of the central question that centers on the discrepancy in interpretation. Ms. Edwards affirm WHMC/PSRD letter shows Department of the Air Force and AFBCMR admit to not having reviewed the 1986 PA Chest and Lateral radiographs with record from WHMC/PSRD affirming the absence of radiographs significantly limits the evaluation. The civil claim before United States Court of Federal Claims (98-930C) affirms: Ms. Edwards was once again seeking the release of the 1986 X-ray film for review. With claim before United States District Court of Maryland being the 1986 Lateral X-ray film affirms Major Whigham did not error when omitting radiographic data under request for correction (DKC-97-1533).

The civil record affirms Ms. Edwards sent Doctor Freedman's 1990-radiology report to AFBCMR in 1992. Doctor Freedman affirms his medical finding for the 1986 PA Chest X-ray film is based o n having read copies of the X-ray film in 1990. Ms. Edwards firmly believes Department of the Air Force and AFBCMR acted in bad faith for each correction denial. With issues under Federal Law being AFBCMR affirmed facts that remain unresolved with facts before the Court affirming Malcolm Grow USAF Medical Center and AFBCMR never reviewed the 1986 X-ray film to affirm a medical finding under Federal Law. Ms. Edwards correction claim for the late. Master Sergeant Edwards dates back to 28 October 1992. With facts before the Court showing Department of Air Force reviewed, and understood substantive and material issues for correction of the military record in 1993, approximately one-year before the 1986 X-ray film and records for these film were destroyed under AFMAN 37139, Table 44-3, Rules 8 and 10.

Ms. Edwards prays, United States District Court of Maryland will grant this MOTION for release of records to United States Court of Federal Claims. With issue of law being the civil record before United States Court of Federal Claims, docket number 98-930C affirms Malcolm Grow USAF Medical Center, Department of the Air Force and AFBCMR destroyed. the 1986 Lateral X-ray film long before United States District Court of Maryland remanded civil claim DKC95-3115. Records before United States District Court of Maryland (DKC-97-1533) affirmed by AFBCMR 31 March 1997, Addendum to Record of Proceedings: There' has been insufficient relevant evidence presented to demonstrate the existence of probable error or injustice for correction of the application filed under Department of the Air Force docket number 93-02789. See civil claims DKC-95-3115, DKC97-1533, and DKC-98-4190 before United States District Court of Maryland and civil claim 98-930C before United States Court of Federal Claims for all facts/evidence in admission for Ms. Edwards correction claim. DKC-98-4190 was filed under request for Concurrent Jurisdiction for all facts in admission with the civil record affirming additional evidence is in admission as a result of civil claim 98-930C before United States Court of Federal Claims.

AFBCMR assert before United States District Court of Maryland Ms. Edwards' violated statute in 1994. Ms. Edwards affirmed she did not violate statute when filing the application for correction of the 1986 medical omission. Ms. Edwards' correction claims before United States District Court of Maryland shows AFBCMR did not release records to affirm destruction of the 1986 Lateral X-ray film. With claim under Federal Law for the 1997 Addendum to Record of Proceedings being: The applicant filed suit in the District Court of Maryland seeking disclosure of documents pursuant to the Freedom of Information Act (FOIA).

. Ms. Edwards request the Court to send written notification or a fax message to Plaintiff to affirm or deny this MOTION for release of records (DKC-98-4190) to United States Court of Federal Claim. Ms. Edwards mailing address: 1120 Windemere Court, Fort Washington, MD 20744, Fax telephone # 1-775-535-3822, Daytime telephone number 703-325-4951.

Sincerely,

/s/ ________________
Myra R. Edwards

Enclosures (6)
1. WHMC/PSRD letter dated
30 September 1993
affirms discrepancy
in interpretation with
no review of the 1986 X-ray film
2. US Department of Justice
Letter dated March 2, 1999
3. AFLSA/JACL letter dated 24
February 1999 to affirm the 1986
PA Chest and Lateral X-ray film
and records for these film was
Destroyed in 1994
4. 11 CS/SCS (FOIA) dated
10 August 2000 affirming
destruction of the 1986 PA
Chest and Lateral X-ray film
5. Transcripts from Untied States Court of
Federal Claims, Docket No. 98-930C
6. Addendum To Record of Proceedings, for
Correction of Military Records, dated
March 31, 1994

CC:
Department of the Air Force
Headquarters Air Force
Military Personnel Center
Randolph Air Force Base, TX 78150

Department of the Air Force
AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews Air Force Base, MD 20762-7002

Department of the Air Force
Legal Office
Malcolm Grow USAF Medical Center
Andrews Air Force Base, MD 20331-5300

SAF/GCA
1740 Air Force Pentagon
Washington, DC 20330-1740

Honorable Paul Sarbanes
United States Senator
Tower 1, Suite 1010
100 S. Charles Street
Baltimore, Maryland 21201-2700

Lynne A. Battaglia
United States Attorney
ATTN: Larry Adams
Assistant States Attorney
6625 United States Courthouse
101 W. Lombard Street
Baltimore, MD 21201

Honorable John Ashcroft
Attorney General
Department of Justice
10th and Constitution Avenues,
NW
Washington, DC 20530

CERTIFICATION

I, Myra R. Edwards affirm the enclosed records are copies of records released by Department of the Air Force and AFBCMR and have not been changed in any way from date of receipt. The enclosed documents are being sent by first class mail postage paid by Myra R. Edwards to all named parties on 5 December 2001. This MOTION is for the release of records used to adjudicate the Correction Claim before United States District Court of Maryland (DKC-98-4190). Request all records used to adjudicate this claim be sent to: United States Court of Federal Claims so that the record in its entirety can be reviewed by Judge Wiese who asked Department of the Air Force and AFBCMR to locate the 1986 X-ray film and records for these film. See Ms. Palko letter to Judge Wiese for location of the 1986 lateral chest X-rays. With record before US District Court of Maryland affirming Ms. Edwards correction claim centers around material facts for the 1986 lateral Chest X-rays and records for this X-ray film.

This MOTION is for the release of all records in their entirety to U.S. Court of Federal Claims based on Judge Wiese request (civil claim 98-930C) for location of the 1986 X-ray film. Ms. Edwards civil claim before United States Court of Federal Claims is for final determination under Federal Law as to whether or not Department of the Air Force and AFBCMR committed statute violations when wrongfully denying correction in 1994. With claim under statute being Ms. Edwards did not file in a timely manner and record before United States Court of Federal Claims affirming the 1986 X-ray film and all records for these film were destroyed in 1994. This MOTION is for the release of all records civil claims DKC98-4190 to U.S. Court of Federal Claims.

Signed: /s/ ___________
Myra R. Edwards

DEPARTMENT OF THE AIR FORCE
11 TH SUPPORT WING

04 May 1995

1 1 MSS/IMS (FOIA)
1 000 Air Force Pentagon
Washington DC 20330-1000

Ms. Myra Edwards
1120 Windemere Court
Fort Washington MD 20744

Dear Ms. Edwards

This is in response to your April 13, 1995 Freedom of Information Act (FOIA) request.

Please be advised that FOIA does not require agencies to answer questions, draw conclusion, nor otherwise render subjective evaluations in response to a request. The FOIA only requires agencies to provide specifically identified records, subject to itemized exemptions, which contain information responsive to a request. Since you are seeking to challenge a subjective determination by the Board, this is not a matter within the purview of the FOIA.

As you have previously been advised, the Board's governing statute permits it to waive timeliness if " ... in the interest of justice." Therfore, the Board reviews the merits of untimely applications and, if found to be meritorious, waives timeliness in the interest of justice. In your case, the Board foun no error or injustice warranting correction of your late husband's records, but elected to decide the case on timeliness. In other words, even had your application been timely, based on the evidence submitted, the Board would not have found an adequate basis to recommend favorable consideration of your case.

Angela Ashton-Kelly is our action officer on (703) 695-4992.

Sincerely

/s/" ____________________________"
CAROLYN W. PRICE
Chief, Documentation Information
and Services Branch

95-0654

WORLD CLASS PEOPLE ... WORLD CLASS SUPPORT

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2002 Mar – 1 A 10:21
Clerks Office
AT – GREENBELT
BY _____ DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

Myra R. Edwards Plaintiff	Civil Case No. DKC-98-4190 DKC-97-1533

v.

DEPARTMENT OF THE AIR FORCE
AFBCMR
&
MALCOLM GROW USAF MEDICAL CENTER
Defendants

REQUEST ENTRANCE INTO THE COURT TO AFFIRM JUDICIAL ERROR: WITH MOTION TO AMEND OR TO SET ASIDE THIS COURTS SUMMARY JUDGMENT (DKC-97-1533) WITH EVICENCE AFFIRI'ED UNDER FOIA BUT NOT ADJUDICATED THAT REVEALS JUDICIAL ERROR FOR FINDING OF FACT USED TO AFFIRM - THE EVIDENCE PRESENTED DID NOT DEMONSTRATE THE EXISTENCE OF PROBABLE OR MATERIAL ERROR OR INJUSTICE

I. ENTRANCE BACK INTO THE COURT

Plaintiff correction claim affirms she has filed the following claims before this Court: DKC-95-3115, DKC-97-1533 and DKC-98-4190.

First and foremost, I wish to thank this Court for taking the time to review the Correction claim. I realize this Court has spent a great deal of time reviewing the issues. My correction claim is complicated because Defendants are refusing to accept responsibility for their wrongful actions used to deny Plaintiff, justice under law for having her late husbands 1986 outpatient medical records corrected. Plaintiff under this MOTION is seeking entrance back into this Court, for civil claim DKC-95-3115. "If Defendants had not denied justice in 1994, with records now affirming they destroyed the 1986 X-rays and all records for these X-rays in January 1994 before Plaintiff received the 11 October 1994 correction denial, I would not be before this Court".

The enclosed FOIA record from 11 MSS/IMS dated 04 May 1995 sums up the Judicial Problem that complicates Plaintiffs correction claim. MSS/IMS affirms, the "Board" reviews the merits of untimely applications and, if found to be meritorious, waives timeliness warranting correction of the late Hartwell E. Edwards 1986 outpatient medical record.

DKC-95-3115, affirms Plaintiff filed for correction of the military record under Title 10 Section 1552 with record of Proceedings from Defendants (93-02789) not revealing they destroyed the material records used in civil claim DKC-97-1533 to affirm Summary Judgment against Plaintiff. MSS/IMS affirms, Defendants under the laws governing correction must Amend the record and admit to the wrongful actions that lead to Plaintiff being denied the lawfully filed claim in 1994, see McFarlane v. Secretary of Air Force. Defendants Addendum To Record of Proceedings should have concluded the Proceedings before this Court without additional findings show: Defendants destroyed the 1986 Lateral X-rays they affirmed in civil claim DKC-97-1533 for Summary Judgment. Plaintiff civil claim based on the material evidence before this Court shows the civil claim should have ended when THE BOARD CONCLUDES, 2) in view of the Courts ruling in **McFarlane** that it was error for the Board to import a reasonableness standard into the date of discovery of the error or injustice for purposes of determining whether an application is timely filed. The civil record shows the BOARD CONCLUDES, and affirms they thoroughly reviewed Plaintiff correction claim. Which shows Defendants knew they destroyed the 1986 Lateral X-rays in January 1994 while withholding material facts for destruction of the X-rays and all records for the X-rays (Civil Record of Proceedings) sent to Plaintiff by Defendants (93-02789 as finding of fact, used by Plaintiff to have her late husbands medical records corrected.

Plaintiff 1994 correction claims, with finding under McFarlane affirms Plaintiff received "No Merit (absolutely nothing) under Federal Law with Defendants knowing of the injustice data, that they continued to use against Plaintiff while making a mockery of this Court proceedings and then being awarded Summary Judgment, with this Court RULING, Plaintiff is under the ORDER of Res Judicata.

DKC-98-4190 affirms Plaintiff has filed once before to Amend or to Set Aside this Courts ORDER for Summary Judgment. Plaintiff is back once again with records affirmed by FOIA that will be used to affirm Defendants wrongful acts against Plaintiff, and used to deny correction of Doctor Whigham 1986 radiology records omission.

Plaintiff is before the Court seeking justice. The record of proceeding for correction under McFarlane DKC-95--3115, affirms an injustice against Plaintiff with no monetary merit for the injustice, and no merit, for correction of Doctor Whigham 1986 medical omission. DKC-98-4190 affirms this Court has ruled Plaintiff is barred from presenting evidence to affirm Defendants violated Statute. It appears that the Court is angry with me for discovering the injustice that Defendants affirmed against me, that lead to the administration/judicial review by this Court. Plaintiff affirms she is seeking entrance back into this Court to affirm Statute and Procedure Violations that have been affirmed by FOIA for civil claim (DKC-97-13533).

Plaintiff is back before this Court with records affirmed by FOIA that will be used to affirm Defendants violated statutes that govern the correction claim denials. Plaintiff correction claim before this Court shows Defendants affirmed a material fact for review of the 1986 X-rays used to affirm "No injustice against Plaintiff" (DKC-97-1533). DKC-98-4190 affirms Plaintiff first filed for entry into this Court in 1999 to present evidence based on Court Proceeding before U.S. Court of Federal Claims that would have been used to affirm Defendants wrongful actions under statute. DKC-98-4190 affirms this Court ruled 1 March 1999, Plaintiff is barred from filing any evidence to affirm Defendants violated Federal Law, and that Plaintiff is denied justice under record of proceedings (DKC-95-3115, DKC-97-1533 and DKC-98-4190).

Plaintiff is back this 1st day of March 2002, with MOTION for entrance back into this Court after having the material evidence in civil claim 98-930C affirmed as correct through FOIA. After the Court Proceedings, Plaintiff filed under FOIA for the release of all records and Lateral X-ray film Defendants affirmed for Summary Judgment in civil claim DKC-97-1533.

II. COURT APPEARANCES

The record of proceedings affirms Plaintiff filed claim in another Court (U.S. Court of Federal Claims, 98-930C) seeking review of the injustice data used to affirm Defendants have not violated Statute.

Plaintiff filed claim before U.S. Court of Federal Claims in December 1999 (98-930C) U.S. Court of Federal Claims dismissed this claim for Lack of Jurisdiction with Record of Proceeding before U.S. District Court of Maryland. Plaintiff filed claim for review of this Court's administration of the claim after this Court Affirmed Summary Judgment without Ruling on DECISION of error in McFarlane v. Secretary of Air Force. The record before this Court affirms Plaintiff filed claim DKC-98-4190 for concurrent jurisdiction with this Court barring Plaintiff under the ORDER of Res Judicata, which barred Plaintiff from presenting evidence discovered in another Court Proceedings affirming

Defendants Federal Violations. Plaintiff's civil claim affirms all Rulings by this Court except remanding the Civil Claim back for further review have been prejudicial and have denied Justice with finding of fact to affirm Defendants wrongful actions.

Civil claim DKC-95-3115 before U.S. District Court affirms: Defendants violated statute under McFarlane when importing a reasonableness standard into the date of discovery with this Court burying the Decision of error in McFarlane by Affirming Summary Judgment in civil claim DKC-97-1533 against Plaintiff. The civil record before this Court affirms: Defendants in violation of Federal Statue in 1994 (affirmed the correction application is untimely) with Defendants Record of Proceedings (93-02789) affirming Plaintiff filed claim 28 October 1992 upon discovering the omission for the medical record 16 April 1990. Without records to affirm the 1986 PA Chest and Lateral X-ray film have been destroyed, Defendants affirmed 11 October 1994, Plaintiff correction claim is denied as untimely under statue. Defendants affirmed a statute violation against Plaintiff contrary to the laws that governs correction of the military record with "NO" finding of fact for review of the 1986 Lateral X-ray film before destruction in 1994.

Defendants affirmed, 1994 correction denial, Plaintiff should have discovered and requested correction of Doctor Whigham 1986 radiology omission no later than 3 years after death. The civil record affirms, Plaintiff discovered the omission in 1990 and immediately released the information for the 1990 finding to Department of Veterans Affairs who was in the process of reviewing Malcolm Grows medical records with Doctor Whigham omission affirmed as a medical fact used to deny entitlements. After discovering Department of Veterans Affairs, merely considered Doctor Freedman finding and that it was ruled to represent no finding of pathology, Plaintiff filed claim with Secretary of the Air Force for Correction of the military record 28 October 1992. Defendants Record of Proceedings affirms Defendants through WHMC/PSRD reviewed all records of the claim for correction without review of the 1986 PA Chest and Lateral X-ray film. Plaintiff received notification of WHMC/PSRD advisory opinion, still with no finding of fact to resolve the discrepancy in interpretation with final resolution being: The PA Chest medical record is corrected to include Doctor Freedman's radiology finding, and we reviewed the Lateral X-rays to affirm, whatever the lateral film affirms.

Defendants affirmed for the remanded civil claim, without release of records (Defendants Record of Proceedings 93-02789 to affirm destruction of the X-rays) it is affirmed: They thoroughly reviewed the remanded claim based on Plaintiffs concerns for correction to find "There's no injustice data". Summary judgment was affirmed.

Plaintiff Appealed the Ruling for civil claim DKC-97-1533, but the Appellate Court for the 4 h Circuit upheld U.S. District Court of Maryland Ruling to affirm Summary Judgment. After the Appellate Court affirmed Summary Judgment, Plaintiff filed claims DKC-98-4190 and 98-930C for concurrent Jurisdiction over the civil records.

DKC-98-4190 affirms U.S. District Court of Maryland barred Plaintiff correction claim under the ORDER of Res Judicata, for all findings of additional evidence that could be used, to affirm Defendants violated Federal Statue and wrongfully denied correction of the 1986 military record.

Civil Claim, 98-930C before U.S. Court of Federal Claims affirms, Defendants destroyed the 1986 Lateral X-ray film without review. DKC-97-1533 shows Defendants affirmed they thoroughly reviewed the remanded civil claim and that their review for the 1986 Lateral X-rays taken on the same date as the PA Chest views shows: Doctor Whigham 1986 omission affirms "no injustice for which Plaintiff can receive merit".

Plaintiff filed MOTION before U.S. District Court of Maryland to Amend, or Set Aside the ORDER of Summary Judgment with finding of fact being the records of proceedings in civil claim 98-930C that would have been used to affirm: Defendants wrongful acts used to affirm Summary Judgment while knowing, "The Board" never reviewed either the PA Chest or Lateral X-ray film, after Plaintiff filed the correction claim in 1992.

U.S. District Court of Maryland barred record of proceeding evidence in civil claim 98-930C by affirming 1 March 1999 Plaintiff is barred under the ORDER of Res Judicata. The Courts Order for (DKC-98-4190) prevents review of any evidence Plaintiff receives to affirm "Defendants willfully and maliciously violated Statute, to include denial of rights under Statute for Burden of Proof" when Defendants affirmed Summary Judgment for review of X-rays destroyed in 1994 without having been reviewed.

Plaintiff believes this Court's Rulings are prejudicial and denies Plaintiffs Rights protected by Federal Statute. Plaintiff filed MOTION, denied by this Court for the removal of all records of Proceedings for civil claims DKC-95-3115, DKC-97-1533 and DKC-98-4190 to U.S. Court of Federal Claim.

Plaintiff Appealed U.S. District Court of Maryland ORDER that denied removal of the records the Appeals Court for the 4th Circuit. Plaintiff filed claim 01-712C before U.S. Court of Federal Claims for administrative review of the record of Proceedings under Appeal for removal. U.S. Court of Federal Claims dismiss Plaintiff's case for removal of the Records for lack of jurisdiction with holding: Plaintiff should file the claim again to U.S. District Court of Maryland. DKC-98-4190 shows U.S. District Court of Maryland has RULED Plaintiff is trying to challenge Defendants correction denial decisions.

U.S. Court of Federal Claim dismissed the civil claim for removal of the Records before U.S. District Court of Maryland, 26 February 2002, civil claim 01-712C for lack of jurisdiction. U.S. Court of Federal Claims affirmed if you pursue your claim it still must be reviewed/administered by the Court with Jurisdiction.

III. DISCOVERY UNDER FOIA AFTER RECORD OF PROCEEDINGS DKC-95- 3115, DKC-97-1533 AND DKC-98-4190

Plaintiff FOIA records under MOTION for entrance back into this Court under the 3-year statute for Discovery affirms information for material record of evidence in civil claims DKC-95-3115, DKC-97-1533, DKC-98-4190 and Defendants Record of Proceedings 93-02789. Defendants Record of Proceedings, show they did not reveal they destroyed the 1986 X-ray film and all records for these film in January 1994 with Plaintiff filing claim under FOIA before this Court, DKC-95-3115.

Plaintiff FOIA records, Plaintiff Record of Proceeding Records from Defendants, and Plaintiffs record of proceedings before U.S. Court of Federal Claim 98-930C affirms the injustice data used to withhold material evidence of record, that now affirms the 1986 X-ray film and all records for the Lateral views taken on the same date, as the PA Chest X-ray view were destroyed; without determination for the longevity of the nodular densities/nipple shadows for finding of fact to determine if the nodular densities found by review of the 1986 PA-Chest record with finding for the lateral views to affirm pathology. Plaintiff finds, instead of correcting the omission, Defendants arbitrarily affirmed the standard radiograph from Doctor Whigham affirms a finding for the Lateral view. The civil claim shows even though the argument is Doctor Whigham finding for standard radiographs affirms a medical fact for the lateral views Defendants continue to deny correction that shows, Malcolm Grows 1986 record is amended to include Doctor Freedman's 1986 radiology finding for the outpatient PA record report. And Doctor Whigham finding affirms results for the PA view taken on the same date, to affirm no pathology. Plaintiff civil claim affirms Defendants never amended the claim. MSS/IMS affirms, the "Board" reviews the merits of untimely applications and, if found to be meritorious, waives timeliness warranting correction of the late Hartwell E. Edwards 1986 outpatient medical record. Civil claims DKC-95-3115, DKC-97-1533 and DKC-98-4190 before this court affirms Defendants found "There No Injustice Data to Warrant Correction of the 1986 Military Record" used to affirm medical facts in omission for the PA view with finding from Doctor Whigham, (to affirm) Doctor Whigham did not error.

Once again, the enclosed FOIA record from 11 MSS/IMS dated 04 May 1995 sums up the Judicial Problems that complicates Plaintiffs claim. MSS/IMS affirms, the "Board" reviews the merits of untimely applications and, if found to be meritorious, waives timeliness warranting correction of the late Hartwell E. Edwards 1986 outpatient medical record. Civil claims DKC-95-3115, DKC-97-1533 and DKC-98-4190 before this court affirms Defendants found "There No Injustice Data to Warrant Correction of the 1986 Military Record".

Plaintiff argues, Defendants knew Doctor Whigham medical record does not support a finding for the 1986 Lateral X-ray view taken on the same date as the PA Chest X-ray findings, and that this fact was known, before Plaintiff received the enclosed final rating decision from Department of Veterans Affairs who affirms denial based on EVIDENCE: Service Medical Records without correction 06/15/94. Plaintiff filed the correction request under Title 10, Section 1552, 28 October 1992 with finding released from WHMC/PSRD, 30 September 1993 affirming the nature of lung nodules due to overlying nipple shadows is such that they are often only seen when the patient is **imaged in a certain position.** Doctor Whigham finding for the 1986 medical record is for

Standard Radiographs.

The FOIA letter from 11 MSS/IMS dated 04 May 1995 shows after Defendants affirmed review of the Remanded Civil Claim (DKC-97-1533) with its prejudicial rulings against plaintiff, the civil record shows the Court gave the "Board" another opportunity to review the merits of untimely applications and, if found to be meritorious, waives timeliness warranting correction of the Late Hartwell E. Edwards 1986 outpatient medical records; with no monetary relief other than the merit for correction of the medical record given to Plaintiff based on Defendants affirmations for Doctor Whigham medical record. See DKC-95-3115 to affirm this Court Denied Plaintiff any and all monetary claim for Defendants wrongful acts contrary to Law under Federal Statute. Plaintiff civil record shows instead of the Board Waiving timeliness, Plaintiff correction claim affirms, Defendants maliciously and without justification affirmed Plaintiff violated statute in 1994 with Plaintiff filing claim under FOIA for release of records and claim under Title 10, Section 1552 for Correction of Doctor Whigham's 1986 radiology records omission.

Plaintiff correction claim affirms this Court barred Plaintiff to ensure, if the record is in error, Plaintiff will never prove that fact in a court of law, and will never receive any monetary relief for the 10 years of suffering and anguish, as a result of Defendants wrongful acts. DKC-98-4190-affirms this Court ORDERED Plaintiff be barred from discovering Defendants violations of law used to affirm an injustice against Plaintiff, see this Courts ORDER of Res Judicata.

III. RECORDS OF PROCEEDINGS

Case #'s 93-02789
DKC-95-3115
DKC-97-1533
DKC-98-4190

The evidence of record before U.S. District Court of Maryland shows Defendants without review of the 1986 Lateral X-ray film, and without revealing the 1986 X-ray film was destroyed; used Doctor Whigham 1986 record, found by the previous "Board" to represent a discrepancy in interpretation, to affirm in DKC-97-1533 "No injustice data exists.

The civil record based on the FOIA record after proceedings shows, the 1986 X-ray film was destroyed in 1994, after Colonel Gary W. Hinzman, WHMC/PSRD affirmed without review of the 1986 X-rays: "The nature of lung nodules due to overlying nipple shadows, is such that they are often only seen when the patient is imaged in a certain position and therefore often times not reproducible".

DKC-97-1533 shows Defendants affirmed in 1997, they reviewed the 1986 Lateral X-rays taken on the same date as the PA view to affirm: Doctor Whigham review of standard radiographs affirms "There' no injustice data, warranting correction of the omission". Plaintiff finds even if you accept Doctor Whigham review of the Standard Radiographs in 1986, Doctor Whigham finding still does not support facts in admission, for the nature of lung nodules due to overlying nipple shadows is such that they are often only seen when the patient is **imaged** in **a certain position.**

Plaintiff affirms, Defendants own Record of Proceedings 93-02789, NULLIFIES a finding for Standard radiographs, see Doctor Whigham medical finding.

Department of the Air Force WHMC/PSRD affirmed after review of all of Plaintiff evidence for correction of Doctor Whigham omission: "The nature of lung nodules due to overlying nipple shadows, can only be seen when the patient is imaged in a certain position".

Plaintiff correction claim affirms negligence on the part of Doctor Whigham who omitted medical facts for review of nodular densities with record of proceedings affirming this doctor reviewed standard radiographs and Defendants had knowledge of the review for the 1986 correction that affirms: The nature of lung nodules due to overlying nipple shadows, that is such, that they are often only seen when the patient is imaged in a certain position.

The correction claim shows Plaintiff affirmed Doctor Whigham erred when omitting a finding for nodular densities/nipple shadows with Defendants affirming there's no error or injustice data to warrant correction of the 1986 outpatient medical record.

DKC-97-1533 shows Defendants affirmed they thoroughly reviewed Plaintiff correction claim on remand. Yet, Defendants Record of Proceedings and Defendants

Addendum to Record of Proceedings, affirms no finding of fact, for destruction of the 1986 Lateral X-ray film used to affirm Summary Judgment before this Court DKC-97-1533).

DKC-97-1533 affirms Defendants under Sufficiency of Claim affirms: Plaintiffs did not seek a claim on which relief may be granted. The Record of Proceedings affirms Plaintiffs' correction claim has been before two Advisory Communities with Defendants affirming they thoroughly reviewed the correction claim to find no injustice data to warrant correction of Doctor Whigham omission. The record of Proceedings from the first "Board" affirms 11 October 1994, Plaintiff is denied correction of Doctor Whigham omission. The Record of Proceedings by this first **"Board"** also affirms no finding of fact, for destruction of the 1986 X-ray film and all records for these films in January 1994.

The Addendum to Record of Proceedings from the Second Board shows, Plaintiff is denied correction, 22 September 1998 with Defendants affirming the "Board is not persuaded that an injustice exists warranting correction of Doctor Whigham 1986 Standard Radiographs, Thus, Defendants used Doctor Whigham uncorrected medical records to affirm Summary Judgment in civil claim (DKC-

97-1533) without correcting the medical omission after this Court Denied Plaintiff's monetary claims.

DKC-97-1533 shows the "Board" knew, by virtue of its own Record of Proceedings, 1993 Advisory Opinion already established the two radiographs submitted affirms "There's a discrepancy in interpretation"'. DKC-97-1533 affirms without correction of the discrepancy in interpretation, and without finding of fact for WHMC/PSRD 1993 medical review, Defendants still maliciously and arbitrarily denied correction while knowing:

1. Colonel Hinzman affirms the absence of radiographs for review significantly limits the 1993 evaluation.
2. Colonel Hinzman also affirms in 1993 Review, of the correction claim by the Advisory "Board", with finding there a discrepancy in interpretation.
3. Colonel Hinzman finding affirms material relevant facts for the 1986 nodular, the nature of lung nodules due to overlying nipple shadows is such that (Defendants were required by law, Title 10, Section 1552) to affirm if the PA Chest X-ray film that reported a finding for nodular

densities/nipple shadows, are only seen when the patient is imaged in a certain position and therefore often times not reproducible.

DKC-97-1533 shows Defendants it its Motion To Dismiss Or in The Alternative, For Summary Judgment, affirms, Plaintiff correction claim should be dismissed for Failure to Sate a Claim Upon Which the Court Can Grant Summary Judgment.

The civil record DKC-97-1533 affirms Defendants - withheld records that should have been apart of the Record of Proceedings 93-02789, to affirm destruction of the Radiographs, before Summary Judgment was Affirmed: FOR Plaintiffs Failure to Sate a Claim Upon Which the Court Can Grant Summary Judgment.

Plaintiff lost the VA correction claim from 1992 - 1994 because she could Not State a Claim with Defendants refusing to release records of fact that they used to deny the claim filed under Statute, meaning no release of records for destruction of the 1986 X-ray film.

The VA claim from 1992-1993 was lost without Plaintiff knowing the material record (1986) Lateral X-ray film was destroyed in 1994, with record of denial in 1994 still not affirming the 1986 X-rays were destroyed. Plaintiff in 1995 filed claim for Agent Orange, MSgt Edwards served 'two Tours in Vietnam, so I used his service and medals records for benefit through Agent Orange from the Department of Veterans Affairs. The civil claim now affirms, even if, the 1986 record is corrected I'd still have to bring claim to affirm 100% Disability with finding of fact now being, Defendants destroyed the 1986 X-ray film and all records for these film in January 1994. I am not before this Court to continuously bring claims against the Government. My claim with Department of Veteran Affairs is settled. I am here to affirm monetary damages based-on Defendants wrongful acts under statute that are not pending before Department of Veterans Affairs. Plaintiff is seeking compensation from Defendants who in Violation of Federal Law misused its Power with no finding of fact, to affirm why; they refused to Correct Doctor Whigham 1986 radiology record.

V. MONETARY RELIEF

Plaintiff is seeking monetary compensation in the amount of 5.5M dollars for the anguish, pain and suffering from 1992 through 2002 with this ordeal having affected my quality of life, and time I should have spent with family, after the lost of my loved one. I believe I've carried a sense of guilt, after shock, upon discovering he had cancer that required immediate removal of his lung in 1987 and then dealing with his death in 1988 I felt cheated with the shock being, loosing him so fast, without his medical records showing he had a chronic condition that may have lead to a situation like this. I lost the quality of our life together and happy times we shared, so fast, without ever knowing he was ill (had cancer that could lead to death).

I don't know how to explain it, I just had to know, how could this happen without some fore warring, or something that showed he had health problems. Having Doctor Whigham uncorrected medical records reviewed, by so many different physicians to affirm a pathology finding for the longevity of the nipple shadows, really cost a lot in terms of money, time, research, time away from my family, lost hours of sleep, and the overall worry of, will this ever end. All I know is I could not rest and the pieces for the 1986 issue just didn't fit. I couldn't shake the feeling there's something else!! Why are Defendants affirming Doctor Whigham did not error, but still not Amending Malcolm Grows

Medical records to affirm the omission with the PA finding from Doctor Freedman to ensure there is no injustice. The record of Proceedings before this Court affirms, Defendants have put up a monumental fight to deny correction without affirming an unbiased reading of the X-rays.

Monetary relief is also for Defendants deceit, and wrongful actions affirming Statute Violations against Plaintiff while knowing they destroyed the 1986 X-ray films 9 months before they sent the denial, contrary to law that affirms I did something more than request correction in a timely manner.

Plaintiff is demanding relief for Defendants having knowledge of all material facts for correction of the record in 1993 with the civil record before this Court affirming, Defendants misrepresented Plaintiff doctors findings to affirm no pathology for Doctor Whigham omission. The record for monetary relief affirms, Defendants arbitrarily, used Doctor Whigham uncorrected medical record to affirm Summary Judgment. Defendants finding of facts used to deny correction of Doctor Whigham omission affirms abuse of Power used against Plaintiff for correction of a medical record Defendants knew they had not reviewed before destruction. Finding of fact now affirms the 1986 X-ray film was not destroyed in 1993 when WHMC/PSRD affirmed facts for review of the X-rays, one year before Plaintiff received the 11 October 1994 correction.

Plaintiff is demanding relief for Defendants affirming they thoroughly reviewed the Remanded record to affirm there is no injustice data, without release of records for destruction of the X-rays; but the record shows, Defendants used the contested record to affirm no "injustice data exists, Summary Judgment Affirmed Against Plaintiff.

/s/ ________________
Myra R. Edwards,
Pro Se.
1120 Windemere Court
Fort Washington, MD 20744
Daytime # 703-325-4951

Enclosure (9)
89 CS/SCSAR (FOIA) dated 8 August 2000
SAF/GCA letter dated-20 December 2000
11 CS/SCS (FOIA) dated 10 August 2000
Department of Veterans Last Rating
Decision using Post Treatment Records
Addendum To Record of Proceedings dated 31 March 1997
WHMC/PSRD letter dated3O September 1993
11 MSS/IMS (FOIA) dated 04 May 1995
Record of Proceedings, dated 11 October 194
Memorandum For Monica Palko dated 24 February 1999

CERTIFICATE OF SERVICE

I, Myra R. Edwards, under penalty of perjury, AFFIRM this MOTION REQUESTS ENTRANCE BACK INTO THE COURT, to AFFIRM JUDGMENT IN ERROR, with records of FACT for this COURT to Amend, or to Alter United States District Court of Mar land's ORDER of Summary Judgment. Plaintiff affirms she is hand carrying, this MOTION with attachments to U.S. District Court of Maryland this 1st day of March 2002. A copy of this MOTION with attachments is being mailed by first class mail this 1st day of March 2002, to all interested Parties as shown below.

/s/ ________________
Myra R. Edwards

Department of the Air Force
AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, Maryland20762-7002

Department of the Air Force
Legal Office
Malcolm Grow USAF Medical Center
Andrews AFB, MD 20762-7002

Department of the Air Force
Headquarters Air Force
Military Personnel Center

Randolph Air Force Base, TX 78150

Lynne A, Battaglia
United States Attorney
Attn: Larry Adams
Assistant United States Attorney
604 United States Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

Honorable John Ashcroft
Attorney General
Department Of Justice
10th and Constitution Avenues, NW
Washington, DC 20530

SAF/GCA
1740 Air Force Pentagon
Washington, DC 20330-1740

Honorable Paul Sarbanes
United States Senator
Tower 1, Suite 1010
100 S. Charles Street
Baltimore, MD 21201-2700

Monica Palko
Attorney for Defendants
Commercial Litigation Branch,
Civil Division
U.S. Department of Justice
Washington, DC 20530

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MYRA R. EDWARDS
v. CIVIL ACTION NO. DKC-95-3115
DEPARTMENT OF THE AIR FORCE
AFBCMR

* * *

MYRA R. EDWARDS
v. CIVIL ACTION NO. DKC-97-1533
DEPARTMENT OF THE AIR FORCE
AFBCMR
MALCOLM GROW USAF MEDICAL CENTER

* * *

MYRA R. EDWARDS
v. CIVIL ACTION NO. DKC-98-4190
DEPARTMENT OF THE AIR FORCE
AFBCMR
MALCOLM GROW USAF MEDICAL CENTER:

..000..

ORDER

On December 7, 2001, I denied plaintiff's motions for release of records to the United States Court of Federal Claims. The Order denying said motions was entered on the docket on December 10, 2001.

On December 18, 2001, Ms. Edwards filed a consolidated motion to reconsider the aforementioned decision. In essence, the fourteen-page motion discusses anew plaintiff's allegations against the defendants in regard to her husband's medical records in terms of what the civil record proves or fails to prove. However, the motion simply provides no new justifiable reason why Ms. Edwards should be granted her request to have documents from the above captioned cases transmitted to the Court of Federal Claims. As already indicated, her case before the United States Court of Federal Claims was dismissed in 1999. Moreover, that Court has not requested the records from this Court. Although, Ms. Edwards seemingly claims that she has filed to reopen her Court of Federal Claims case, I find this allegation unavailing for purposes of reconsidering her request for court documents.

For these reasons, her motions to reconsider shall be denied.

Accordingly, IT IS this 9th day of January 2002, by this Court hereby ORDERED that:

1. Plaintiff's motions to reconsider, filed in each of the above-captioned cases, ARE hereby DENIED; and
2. The Clerk of the Court MAIL a copy of this order to the plaintiff and to Assistant United States Attorney Larry Adams, 6625 United States Courthouse, 101 W. Lombard Street,

1120 Windemere Court
Fort Washington, MD 20744
2 June 1999

Clerk's Office
United States Court of Appeals
For the Fourth Circuit
US Courthouse, 5th Annex Floor
1100 East Main Street
Richmond, VA. 23219

Reference: Appeals Court 99-1342, Myra R. Edwards v. Department of the Air Force and Malcolm Grow USAF Medical Center

Dear Madam/Mister Clerk,

The three enclosed documents were on file before the District Court of Maryland for civil complaint DKC-95-3115 arid DKC-97-1533. Plaintiff is submitting these documents along with the Petition for Rehearing because she is unsure of the Court's filing number used to reference. these documents for the enclosed Petition for rehearing.

The enclosed documents are: Department of Air Force denial letter that shows the claim for correction is timeliness. Also enclosed is a copy of the application for Correction of the contested 1986 Military Record. And the late Mr. Edwards death certificate used in error for the correction denial.

The material facts in evidence for correction of the Military Record were overlooked by the United States District Court of Maryland in civil action DKC-95-3115 and DKC-97-1533 as argued in the enclosed Petition for rehearing. Request the enclosed documents and the court record for civil complaint DKC-95-3115 and DKC-97-1533 be before the Court when Plaintiff's case comes up for rehearing.

Encls. Thank you,
as

/s/ _______________
Myra R. Edwards
Pro Se Representative
703-806-3425

****

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Myra R. Edwards
Plaintiff,
v. CASE NUMBER 99-1342
DEPARTMENT OF THE AIR FORCE
AFBCMR

MALCOLM GROW USAF MEDICAL CENTER
Defendants.

PETITION FOR REHEARING REQUEST ORAL ARGUMENTS AS A MATTER OF LAW FOR UNITED STATES DISTRICT COURT'S ERRORS OF LAW IN CIVIL ACTION DKC-95-3115, DKC-97-1533 AND DKC-98-4190

STATEMENT OF COUNSEL: Myra R. Edwards, Pro Se Representative, 1120 Windemere Court, Fort Washington, MD 20744, 703-806-3425

Civil action DKC-95-3115, DKC-97-1533 and DKC-98-4190 arose from United States error under FEDERAL Law. United States letter dated 22 November 1994 for the correction denial See Defendants Memorandum In Support of Motion To Dismiss, TR

30-31 and enclosed letter from United States (AFBCMR) that was sent to Plaintiff denying correction of the late Mr. Edwards 1986 radiology record as untimely.

Claim of the United States, AFBCMR Docket number 93-02789: Plaintiff asserted April 16, 1990 as the date she discover4 the injustice data for Major Whigham 1986 pathology omission. ON APPEAL, Plaintiffs closed case DKC-98-4190 under the doctrine of res judicata that arose under Federal Law because the United States District Court of Maryland materially erred when granting summary judgment to the Defendants in civil complaint DKC-95-3115 and DKC-97-1533.

Material errors as a matter of law not resolved in DKC-95-3115 include: Judge Ellis Ruling in McFarlane v. Secretary of the Air Force, for the correction denial based on timeliness. As a matter of law DKC-95-3115 and DKC-97-1533 shows no Judicial resolution based on the Court remanding the civil complaint based on Judge Ellis ruling in McFarlane v. Secretary of the Air Force. DKC-97-1533 shows, the United States (AFBCMR) in the Addendum To Record For Proceedings Air Force Board For Correction of Military Records dated Mar 31, 1997 determined the remanded case shows: There is insufficient relevant evidence presented to demonstrate a probable error or injustice under law. Therefore, United States refused to correction the late Mr. Edwards 1986-radiology data, to show, pathology findings not written in the original record under review by the Department of Veterans Affairs in 1991. See Department of Veterans Affairs denial decision issued 18 June 1991. Which shows Doctor Freeman's pathology data for the 1986 contested record is not included in the Department of Veteran's Affairs denial decision. The United States Memorandum of Law In Support Of Motion to Dismiss Plaintiffs Complaint or For Summary Judgment in civil complaint DKC-97-1533 at the bottom of page 7 and top of page 8 clearly states. "The fact that Doctor Whigham chose not to include a comment about nipple shadows does not make Malcolm Grows 1986 radiology record in error or inaccurate". United States District Court of Maryland dismissed all of Plaintiffs civil complaints in DKC-97-1533 with no Judicial decision under Federal law on Judge Ellis precedent decision in McFarlane v. Secretary of the Air Force. DKC-97-1533 also shows no Judicial decision based on the newly discovered facts for the Military Record Correction Request with admissions by the United States in 1997 that Major Whigham chose to omit pathology data that Plaintiff under Federal Law in 1992 asked be corrected The remanded case shows... United States assert the omission for the contested 1986 record does not make Major Whigham written 1986 radiology report in error or in accurate based on facts in admission showing.. The material error was reviewed by independent doctors who did not know in 1989 and 1990 Major Whigham chose to omit pathology data for the written record in review.

Plaintiff's request civil complaint DKC-98-4190 is allowed to proceed with facts in admission; if the Court finds the 1986 Military record should be corrected. And that, the Court grant Plaintiff the right to have the corrected medical record reevaluated for determination as a matter of law, whether or not Major Whigham erred when he chose to omit pathology data in 1986. The United States (AFBCMR) assert in its Memorandum Of Law for DKC-97-1533 without releasing any 1986 radiology film that Major Whigham's 1986 omission does not make the contested 1986 record in error. The ORDER of the Court issued 22 September 1998 state on page 4, Plaintiff offered the opinions of three doctors noting the presence of nodular densities. Thus, the Court's ORDER shows the Court opined: Doctor Freeman finding should not be used to correct Major Whigham 1986 omission, because Doctor Freeman finding does not reveal any sort of pathology. The civil record shows the issue of law based on Plaintiffs complaint is: Correction of Malcolm Grows 1986 record based on omissions for pathology as shown by Doctor Freeman 1990 finding for the contested 1986 issue.

United States District Court of Maryland dismissed Civil Complaint DKC-97-1533. Showing this court granted Summary Judgment in favor of the Defendants with material facts being miss interrupted or overlooked based on United States assertions for the correction denial before the Court.

The United States District Court of Maryland stopped proceedings of Law under the doctrine of res judicata in civil complaint DKC-98-4190 filed by Plaintiff for violations of Federal law to include Judge Ellis decision in McFarlane v. Secretary of the Air Force-.

Therefore Plaintiff is before the United States Court of Appeals for the Fourth Circuit to argue the issues of law under civil action DKC-98-4190 that should not be denied. Facts before the Court shows no resolution for the correction denials DKC-95-3115 and DKC-97-1533.

At issue, errors of Law, under the doctrine of res judicata, that denies correction of the contested 1986 omission. ORDER of the Court in DKC-97-1533 affirms correction is being denied because Doctor Freeman 1990 finding gives no specifics for a chronic condition related to the contested 1986 record. Facts under law shows: Plaintiff state on the Application For Military Records Correction in 1992 that independent doctors reviewing Malcolm Grows medical records could not determine a chronic condition related to pathology for the 1986 contested record. Facts for the omission shows under law, Major chose to omit or not comment on nodular densities/nipple shadows for the contested record. And that, Plaintiffs is requesting the 1986 Military Records correction to reconcile Major Whigham's omission that was denied for timeliness. See Plaintiffs enclosed Application for Military Records Correction, bottom of page 045 and page 046 showing Plaintiff told United States (AFBCMR) and the Court, correction is being requested because, independent doctors reviewing Malcolm Grows system of records for the 1986 issue, did not view x-ray film. And that, Doctor Freeman's 1990 pathology finding for the 1986 x-ray film contradicts, Major Whigham's 1986 written record, resulting in Plaintiff requesting a Military Records Correction to reconcile the medical facts for the 1986 contested record. Pathology finding for the 1986 x-ray film is shown by reading Doctor Freeman's report, which also shows the omission/contradiction of medical pathology based on Major Whigham's 1986 data for the contested 1986 record. See

Doctor Freeman, 1990 X-ray finding for medical facts in omission based on Major Whigham choosing to omit pathology data in 1986 in Defendants TR 71, block 11a, 75.

Defendants Memorandum of Law... in DKC-97-1533, bottom of page 7 and top of page 8, affirms Major Whigham chose to omit pathology data in 1986. Therefore the contested 1986 record does not report a finding for nodular densities nor does it include a medical evaluation from the United States for the injustice data in year of occurrence (1986). Also see Defendants Memorandum of Law In Support of Motion To Dismiss ... page 7 paragraph 3 for the following assertions by the United States "All of the doctors who have read the x-rays since MSgt Edwards death, with facts under law showing the doctors who reviewed the record after death, gave reports for the uncorrected 1986 issue. See Application for correction page 045 that shows Plaintiff state: The report from the above doctors was given without benefit of examining my husband's actual x-ray film for 1986. The issue of law shows Plaintiff state on the application for correction that these doctors did not read the x-ray film for the contested issue and that's the problem. The 1986 x-ray film shows the facts for the pathology reading; however Major Whigham chose to omit pathology for the contested 1986 record. So the reviews on the civil record as written for the 1986 record is misleading if the question under Federal Law is: Plaintiff request a medical review of Malcolm Grows Military Records for the late Mr. Edwards for a pre-existing condition that probably led to the production of death. See Plaintiffs enclosed 1992 Application for Military Records Correction.

Facts before the Court are: Plaintiff was unjustifiably denied correction of the 1986 omission based on Judge Ellis ruling for timeliness. DKC-97-1533 shows the issue of error as being: The United States (AFBCMR) assert all independent doctors attributed the nodular densities to nipple shadows. Facts under law for the independent doctors pathology finding is shown on: Plaintiff application for Correction of Military Records in 1992 and before the Court in civil action DKC-95-3115 and DKC-97-1533. Facts before the Court show Plaintiff state: the independent doctors did not know the pathology data was omitted when Major Whigham in 1986 omitted pathology for the contested record. Defendant's Memorandum In Support of Motion To Dismiss, page 2, shows United States knew Plaintiffs case was before the Veteran's Administration. Arguably the issue of law based on the correction denial is: The United States erred and cause undue hardship for the Edwards family by wrongfully denying correction while knowing Plaintiff requested review of the Military record for service entitlement. Issue of Law: United States refused to correct the injustice data while knowing Plaintiff's claim was before the. Veterans Administration. Facts for the correction refusal include. Refusing correction of the injustice data before this Court with facts in admission showing Major Whigham chose to omit pathology data that Plaintiff in accordance to law asked be corrected. Facts before this Court are: The United States District Court of Maryland, DKC-95-3115 and DKC-97-1533 ORDERS, shows findings even when in error were for the Defendant, not the Plaintiff for resolution of the 1986 injustice data. Plaintiff's claim before the United States District Court of Maryland, DKC-95-3 115, DKC-97-1533 and DKC-98-4190 under Federal Law shows: Under the Provisions of Title 10 section 1552, Plaintiff asked the United States to correct the contested 1986 injustice data. However, the civil record shows, even though, the United States admit in its Memorandum of Law in DKC-97-1533 that Major Whigham chose to omit pathology data in Malcolm Grows 1986 system of records, the civil record for the correction request remains uncorrected; to include no resolution of the complaint in DKC-98-4190 because the Court is barring this claim under the doctrine of res judicata. See civil complaint DKC-984190 for unresolved issues based on Plaintiffs request under Federal Law for a Military Records correction of Major Whigham 1986 pathology omission. The civil record before the United States District Court of Maryland clearly shows Plaintiff requested correction of Major Whigham's 1986-pathology omission October 28, 1992.

The United States District Court of Maryland's ORDER in DKC-95-3115, opined: Plaintiffs FOIA CLAIM BE DISMISSED. As FOIA grants district courts jurisdiction to enjoin an agency from improperly withholding agency records, a prerequisite to that jurisdiction is that there must be improper agency action under statute, as explained in Kissinger v. Reporters Committee for the Freedom of the Press, 445 U.S. 136,150 (1980). See enclosed Court Order in DKC-95-3115, pages 8-9.

Plaintiff is petitioning a rehearing based on the agency (United States) improperly using the late Mr. Edwards death certificate as the record released under FOIA to deny correction of Major Whigham's 1986 pathology omission based on timeliness in DKC-95-3115. See United States District Court of Maryland's Memorandum Opinion in civil complaint DKC-95-3115, page 4, paragraph 2. Under Federal Law, the Air Force released two documents that they considered arguably responsive to Plaintiff request for record correction under FOIA in support of United States assertion for timeliness These two documents are identified in the Court's ORDER issued 11 October 1996 page 9, as being the death certificate and the application for Military Records Correction.

The civil record shows the United States (AFBCMR) denied Plaintiffs correction request as untimely. The United States District Court of Maryland opined in the Courts ORDER in DKC-95-3115 that it was error for AFBCMR to import a reasonableness standard into the date of discovery of the error or injustice for purposes of determining whether an application was timely filed, 867 F. Supp. At 411. DKC-95-3115 and DKC-97-1533 shows: The Court opined without ruling on the precedence finding by Judge Ellis in McFarlane v. Secretary of the Air Force, 867 F. Supp. 409 (E.D. Va. 1994) that United States erred 22 November 1994 through 31 March 1997 on timeliness. This opinion by the Court, is shown to be based on United States criteria used to deny correction of Major Whigham 1986 omission. See Court ORDER issued 11 October 1996 for DKC-95-3115 page 11-12. Page 12 shows the United States District Court of Maryland remanded this matter to AFBCMR for further proceeding 11October 1996.

Defendants Memorandum Of Law In Support of Motion To Dismiss … on pages 3 and 4 state: The Court ruled is was error to import a reasonableness standard in the date of discovery of the error or injustice for purposes of determining whether an application is timely filed. Therefore, if under law, the United States agrees it was error to import a reasonableness standard into the date for discovering Major Whigham's omission. The question under Federal Law becomes: Why is the contested 1986 radiology report for Major Whigham still uncorrected if timeliness as stated in AFBCMR's 22 November 1994 letter the criteria for the 22 November 1994 denial? Arguably, DKC-98-4190 should not be barred under the doctrine of res judicata. Facts under law for this doctrine shows JUDGMENT was entered against Plaintiff in DKC-97-1533 with facts in error based on the United States assertion before the Court to include no resolution under Federal Law for timeliness and the correction denial?

DKC-97-1533 shows additional errors of law based on the United States refusal to correct Major Whigham's 1986 omission. At issue, while the United States claim in the Addendum To Record of Proceedings... under Federal Law: It was not persuaded that the record raised issues of error or injustice. The Court's ORDER in DKC-97-1533 issued 22 September 1998 shows the Plaintiff received no merit for

Judge Ellis ruling. Facts as a matter of law for the civil complaint shows: United States admits in its Memorandum of Law on pages 7 and 8 Major Whigham chose to omit pathology data in 1986. With facts under Federal Law in Plaintiffs application for a Military Records Correction showing: Plaintiff requested correction of the admitted 1986 omission in 1992.

Request a re-hearing to argue: Plaintiffs complaint before the United States District Court of Maryland in DKC-95-3115 and DKC-97-1533 was for correction of Major Whigham's 1986 pathology omission. Facts ON APPEAL in DKC-97-1533 and DKC-98-4190 are- The civil record shows the Board concluded in DKC-97-1533 that the remanded record requires no resolution for facts in evidence before the Court in DKC-95-3115 and DKC-97-1533. The civil record for DKC-95-3115 and DKC-97-1533 shows United States changed the issues of law for Plaintiffs complaint in DKC-97-1533. Thereby showing the United States assert under Federal Law, the request for correction is no longer valid, if Plaintiff's medical facts fail to demonstrate a chronic condition related to Major Whigham's 1986 omission. **United States Addendum To Record in DKC-97-1533 makes clear the Board is not persuaded to correct Major Whigham's 1986 pathology omission based on facts in evidence showing all independent doctors of record attributed the nodule densities**

to nipple shadows; even though Plaintiff states on the Application for Records Correction that the doctors of record did not review Malcolm Grows x-ray film. Arguably, Federal Law clearly mandates: The Military Record must include all data revealed upon review of the x-ray film. At issue, in accordance to Law the Military Record was not corrected in DKC-95-3115 or DKC-97-1533. Therefore, Plaintiff filed civil complaint DKC-98-4190 for receipt of all of Malcolm Grows 1986 x-ray film for determination under Federal Law if Major Whigham's 1986 omission relates to a pre-existing condition that probably led to the production of death. See Court's opinion in DKC-95-3115 and DKC-97-1533 showing United States (AFBCMR) and the United States District Court of Maryland makes clear: Plaintiff records in DKC-95-3115 and DKC-97-1533 show no chronic condition or pathology; for determination under law that Major Whigham's 1986 omission led to the production of death.

DKC-97-1533 shows Plaintiffs correction request was denied. Thus, Plaintiff filed civil action DKC-98-4190 should not be barred under the doctrine of res judicata. Under Federal Law United States District Court of Maryland opinion in DKC-97-1533: Major Whigham did not error based on findings of independent doctors who did not know Major Whigham chose to omit pathology for the contested 1986 issue. See United States (AFBCMR) finding in DKC-97-1533, for no chronic condition or pathology for the 1986 omission. ON APPEAL: United States District Court of Maryland 11 October 1996 ORDER and 22 September 1998 ORDER. Plaintiff is before the Court to argue: United States District Court of Maryland's ORDER of res judicata to bar correction of Major Whigham's 1986 omission should be reversed. Arguably, this RULING is in error if the issue of law for barring DKC-98-4190 is the claim has been finally litigated with resolution of facts in dispute in accordance to Federal Law.

Errors of Law based on Plaintiff's correction request. The United States Court For the District of Maryland in the Memorandum Opinion dated 22 October 1998, for civil complaint DKC-97-1533 opined. The 1986 contested medical record will not be corrected under civil action DKC-95-3115 or DKC-97-1533; because Plaintiff did not support the complaint under Federal Law to show a pre-existing condition that relates to her late husband's cause of death. Finding by the Court, Plaintiffs uncorrected pathology report from Doctor Freeman did not support a **chronic condition to persuade the Board and this Court that the 1986 omission should be corrected in accordance to Federal Law.**

See Court's ORDER and Memorandum Opinion for DKC-97-1533 pages 5 - 7 that show the Court understood the issues for correction based on Plaintiff request under Title 10 U.S.C. Section 1552. **Plaintiff is before the United States Court of Appeals for rehearing based on errors of law overlooked or not ruled upon, under application of law for the Military Records correction**.

Issues of Law: Without correcting Major Whigham's 1986 omission the court opined the uncorrected record is not etiologically related to any lung pathology or other pathology present during the late Mr. Edwards service with the United States Air Force. DKC-95-3115 and DKC-97-1533 show: The United States District Court of Maryland opined the Board reviewed the case, based on timeliness and since the Board state the reviewed case is without merit the Court ruled in favor of the United States without correcting Major Whigham 1986 omission. See ORDER and Memorandum Opinion in civil action DKC-97-1533 dated 22 September 1998, page 7 paragraph 2.

Facts under Federal Law for the correction denial shows: The Board chose to deny correction based on timeliness (which again violates Plaintiff-s rights under Federal Law, and protected by statute). United States (AFBCMR) admits in its Memorandum of Law In Support Of Motion To Dismiss on page 3 last paragraph and top of page 4. The United States District Court of Maryland ruled it was error for United States (AFBCMR) to use timeliness to deny correction of the 1986 omission. However, rulings by the Court in DKC-95-3115 and DKC-97-1533 do not show Plaintiff was given any merit under law for resolution of claim with facts in evidence for timeliness. See ORDER for DKC-95-3115 and DKC-97-1533. United States Memorandum of Law clearly states:. Plaintiff's case should be dismissed because there are no genuine issues of material fact in dispute for the correction denial. As a matter of Law, Plaintiff filed response January 19, 1999 Paper *No. 5* arguing United States erred under Federal law when denying the correction request. Facts before the court shows: the Application for a Military Records Correction was filed within Statute under Federal Law, with facts in dispute showing United States used the late Mr. Edwards death certificate to deny correction. Additionally, Plaintiff argued, United States knew Major Whigham omitted pathology with facts under Federal Law showing: Plaintiff is being denied correction of known medical pathology not apart of Malcolm Grows written record for the contested 1986 issue. See Defendant's Memorandum of Law in Support of Dismissal... bottom of page 7 and top of page 8 and Plaintiff's enclosed Application for Military Records Correction.

Request rehearing to argue: It is error for United States District Court of Maryland **to not RULE** in civil action DKC-97-1533 or barred civil action DKC-98-4190 that United States erred under Federal Law when refusing to correct Major Whigham's 1986 omission of pathology under timeliness. Defendant's Memorandum of Law In Support of Motion To Dismiss Plaintiff's Complaint or For Summary Judgment, (DKC-97-1533) in statement of case page 1, shows: Plaintiffs civil action arose pursuant to Privacy Act 5 U.S.C Section 552a(d) and 10 U.S.C. Section 1552. Facts as a matter of law are Defendants and the United States District Court of Maryland clearly understood, Plaintiff seeks to correct her husband's 1986 x-ray report that omitted pathology data not recorded in Malcolm Grows system of records. See Defendant's Memorandum of Law In Support of Motion to Dismiss, pages 7 and 8 for Major Whigham's pathology omissions also included, see page 3 for Doctor Freeman TR. 71, block 11a, 75. Also see Department of Veterans Affairs denial issued June 18, 1991 (including defendant's TR. 79-80, 81-83,87), and Plaintiffs application for the record correction. Finally, see United States District Court of Maryland ORDER and Memorandum Opinion issued 11 October 1996 and 22 September 1998.

AS A MATTER OF LAW

The United States admits Major Whigham omitted pathology findings for the contested 1986 data. Therefore, civil complaint DKC-98-4190 shows neither party is contesting the 1986 omission. However civil complaint DKC-95-3115 and DKC-97-15 33 shows: No Court ORDER for Judge Ellis ruling of law in McFarlane v. Secretary of the Air Force. To include no ORDER showing United States (AFBCMR) wrongful acts under claim for the correction denial from 22 November 1994 through 31 March 1997 based on timeliness. Therefore, Plaintiff is before them court to argue, the United States unjustifiably denied correction of the contested data in violation of Federal Law based on Judge Ellis ruling in McFarlane v. Secretary of the Air Force.

Plaintiff is also before the Court of Appeals to argue: The United States District Court of Maryland materially erred in DKC-97-1533 by not ruling on the Court's finding of law for error in McFarlane v. Secretary of the Air Force. See ORDER and Memorandum Opinion DKC-971533 dated 22 September 1998 and DKC-95-3115 dated 11 October 1996. The issue of law for correction before this COURT was never for pathology findings. Plaintiff simply asked that the record is corrected and that relief is granted based on errors of law and for and hardship placed on the Edwards family. The issue of law in DKC-95-3115 and DKC-97-

1533 was for a record correction as shown in Defendant's Memorandum of Law for DKC-97-1533 ... page I states: Plaintiff brings suit against United States pursuant to the Privacy Act 5 U.S.C section 552a(d) and 10 U.S.C section 1552. ISSUE OF LAW: On record, United States District Court of Maryland refused to rule in DKC-95 3115 and DKC-97-1533 on the wrongful actions of the United States based on Judge Ellis precedent decision. Therefore, the question of law is: Should Plaintiffs DKC-98-4190 complaint be barred under the doctrine of res judicata? Arguably, the Court's rulings shows Plaintiff was denied Judge Ellis decision in McFarlane v. Secretary of the Air Force, 867 F. Supp. 409 (E.D. Va. 1994) see Order of the Court dated 11 October 1996 page 9 for Court's opinion of error based on facts in admission for timeliness.

FACTS ON APPEAL:

Plaintiff received no Merit under Federal Law for the correction request based on United States admission that Major Whigham chose to omit 1986 pathology data under request for correction by application of law. (2) Plaintiff received no Merit under Federal Law in DKC-953115 based on Judge Ellis ruling in McFarlane v. Secretary of Air Force. (3) Plaintiff was denied under FOIA those records the United

States used to claim in dismissed civil action DKC-97-1533, shows Major Whigham did not error even though he omitted pathology data under request for correction (4) DKC-95-3115 shows the United States only release two documents under FOIA (a) Death Certificate and (b) Application for Military Records Correction for claims under Federal Law that Major Whigham did not error when he chose to omit 1986 pathology data under request for correction. (5) The remanded civil complaint DKC-97-1533 shows: Plaintiff filed DKC-98-4190 under 28 U.S.C. 1346 for wrongful acts by the United States in accordance to law, for determination if Major Whigham's omission relates to a pre-existing condition. Arguably, as a matter of law Plaintiff is due a copy of all of Malcolm Grows 1986 x-ray film for determination of facts in evidence for Major Whigham's omission.

At issue: United States assert in DKC-97-1533 that the remanded case was thoroughly reviewed and that Malcolm Grows 1986 frontal and lateral chest x-ray film, shows Major Whigham did not error. To resolve under law United States admissions for the uncorrected 1986 radiology record. Plaintiff request a copy of all of Malcolm Grows 1986 frontal and lateral x-ray film for evaluation as a matter of law, for resolution of United States assertions for pathology in omission. As a matter of law: Plaintiff request that the Court RULE on whether or not Plaintiff must provide evidence to show Major Whigham's report is inaccurate or in error prior to United States correcting Major Whigham's 1986 omission. United States Memorandum Of Law In Support of Dismissal top of page 8 clearly states: The Plaintiff has not provided any evidence to show that Major Whigham's report is in any way inaccurate or in error. Facts in admission DKC-97-1533 for the United States District Court of Maryland's ORDER shows the new unjustifiable issued used to deny correction of Major Whigham's omission are: Plaintiff must provide evidence to show Major Whigham's report is in error before United States will correct the contested 1986 record. ON APPEAL: Plaintiff demand to receive a copy of all of Malcolm Grows 1986 radiology x-ray film used to determine Major Whigham did not error in dismissed civil complaint DKC-97-1533. Also ON APPEAL, United States District Court of Maryland res judicata ORDER and Memorandum Opinion for DKC-98-4190 that should be vacated based on issues of law showing: 29 January 1999, Page 1 of the United States District Court of Maryland's Memorandum opined: Plaintiffs claim has already been litigated in this Court; showing this is true. However, the civil record shows no resolution of facts litigated, including errors under Federal Law for the finding of fact, based on Plaintiff's request for a Military Records Correction. Plaintiff came before the United States District Court of Maryland under the Provisions of Title 10 section 1552 requesting correction of the contested 1986 radiology report for Major Whigham's 1986 omission. 2 October 1997 on page 4, Defendant's Memorandum of Law... states: The Court ruled "that is was error for AFBCMR to import a reasonableness standard into the date of discovery. However, the Court's ORDER in DKC-95-3115 and DKC-97-1533 does not show the Court's ruling for timeliness. United States District Court of Maryland's ORDER and Memorandum issued 29 January 1999 clearly state on page 1 and 2, Plaintiff disputes the Air Force Board for the Correction of Military Records "Addendum" decision to deny the correction of the records on the basis of timeliness showing no resolution of law for the wrongful acts of the United States in DKC-95-3115 and DKC-97-1533. The United States ORDER issued 8 February 1999 state Plaintiff have not articulated a justifiable reason for altering the Court's January 29, 1999 decision. Therefore, Plaintiff comes before the United States Court of Appeals for the Fourth Circuit to request rehearing with ORAL Arguments; so that, the issues before the Court of Appeals not articulated in this writing are, argued in Court.

With all due respect to the Court: Plaintiff finds United States

District Court of Maryland did not uphold Judge Ellis ruling in McFarlane v. Secretary of the Air Force. With facts on the civil record showing: **This Court opined on page 9 of the ORDER and Memorandum Opinion issued 11 September 1996 in DKC-95-3115 that is may have been error for AFBCMR to use the test of timeliness to deny correction of Major Whigham's 1986 pathology omission"**. Facts under law shows on page 9 of this ORDER, AFBCMR used the late Mr. Edwards death certificate to claim under Federal Law Plaintiff filed the application for Military Records Correction more than four years after his death. Plaintiffs application for Correction Of Military Records clearly shows on page 046 that the copied 1986 and 1988 radiology film were taken to Georgetown University Hospital where Doctor Freeman radiologist, on 16 April 1990 found the contested 1986 data.

/s/ ______________________________ 2 Jun 1999
(Signature) Myra R. Edwards Date

CERTIFICATE OF SERVICE

This Request for Re-Hearing is being sent to: Clerk, United States Court of Appeals For the Fourth Circuit US

Courthouse, Annex 5th Floor 1100 East Main St. Richmond, Va. 23219 with attachments this 2nd Day of June 1999. A copy of this request with attachments is being sent to all parties addressed below. All postage for this first class mailing is being paid by Myra R. Edwards.

/s/ ______________________
(Signature) Myra R. Edwards

Lynne A. Battaglia,
United States Attorney
ATTN: Larry Adams
Assistant States Attorney
6625 United States Courthouse
101 W. Lombard Street.
Baltimore, MD 21201

Honorable Janet Reno,
Attorney General
Department Of Justice
10th and Constitution Avenues, N.W.
Washington, DC 20530

AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, MD 20762-7002

Department Of The Air Force
Legal Office
Malcolm Grow USAF Medical Center (MAC)
Andrews AFB, MD 20331-5300

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-1342

MYRA R. EDWARDS

Plaintiff - Appellant,

versus

DEPARTMENT OF THE AIR FORCE, AFBCMR; MALCOLM GROW UNITED STATES AIR FORCE MEDICAL CENTER,

Defendants - Appellees.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Deborah K. Chasanow, District Judge. (CA-98-4190)

Submitted: May 13, 1999 Decided: May 19, 1999

Before WIDENER, WILKINS, and MOTZ, Circuit Judges and BUTZNER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Myra R. Edwards, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Myra R. Edwards appeals the district court's order dismissing her civil complaint on the basis of res judicata and denying her motion for reconsideration. We have reviewed the record and the district court's opinions and find no reversible error. Accordingly, we affirm on the reasoning of the district court. See Edwards v. Dep't of the Air Force AFBCMR, No. CA-98-4190 DKC (D. Md. Feb 2 & Mar. 2, 1999).* We dispense with oral arguments because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

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* Although the district court's order is marked as "filled" on January 29, 1999, the district court's records show that it was entered on the docket sheet on February 2, 1999. Pursuant to Rule 58 and 79(a) of the Federal Rules of Civil Procedure, it is the date the order was entered on the docket sheet that we take as the effective date of the district court's decision. See Wilson v. Murrary, 806 F.2d 1232, 1234-35 (4th Cir. 1986).

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-1102

MYRA R. EDWARDS
versus Plaintiff - Appellant,
UNITED STATES DEPARTMENT OF THE AIR FORCE,
AFBCMR; Defendants - Appellees

* * *

No. 02-1103

MYRA R. EDWARDS
versus Plaintiff - Appellant,
UNITED STATES DEPARTMENT OF THE AIR FORCE;
MALCOLM GROW UNITED STATES AIR FORCE
MEDICAL CENTER Defendants - Appellees

* * *

No. 02-1104

MYRA R. EDWARDS
versus Plaintiff - Appellant,
UNITED STATES DEPARTMENT OF THE AIR FORCE,
AFBCMR; MALCOLM GROW UNITED STATES AIR
FORCE MEDICAL CENTER Defendants –
Appellees

Appeals from the United States District Court for the District of Maryland, at Greenbelt, Deborah K. Chasanow, District Court Judge. (CA-95-3115-DKC, CA-97-1533-DKC, CA-98-4190-DKC)

Submitted: April 18, 2002 Decided: April 26, 2002

Before MOTZ, TRAXIER, and GREGORY, Circuit Judges

Affirmed by unpublished per curiam opinion.

Myra R. Edwards, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Myra R. Edwards appeals the district court's orders denying her motion to transfer district court records to the United States Court of Federal Claims and denying her motion for reconsideration. We have reviewed the record and the district court's orders and find no reversible error. Accordingly, we affirm on the reasoning of the district court. See Edwards v. Department of the Air Force, Nos. CA-98-4190-DKC; CA-97-1533-DKC; CA-95-3115-DKC 9D. Md. filed Dec. 10, 2001; entered Dec. 12, 2001; Jan. 9, 2002). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

JUDGMENT
FILED: April 26,2002
UNITED STATES COURT OF APPEALS
for the
Fourth Circuit

NO. 02-1102
CA-95-3115-DKC

MYRA R. EDWARDS
Plaintiff - Appellant
v.

UNITED STATES DEPARTMENT OF THE AIR FORCE
Defendant - Appellees

NO. 02-1103
CA-97-1533-DKC

MYRA R. EDWARDS
Plaintiff - Appellant,
v.

DEPARTMENT OF THE AIR FORCE; MALCOLM GROW
UNITED STATES AIR FORCE MEDICAL CENTER

Defendants - Appellees.

NO. 02-1104
CA-98-4190-DKC

MYRA R. EDWARDS
Plaintiff – Appellant
v.

UNITED STATES DEPARTMENT OF THE AIR FORCE;
MALCOLM GROW

UNITED STATES MEDICAL CENTER
Defendant - Appellees

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Appeal from the United States District Court for the District of
Maryland, at Greenbelt.

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In accordance with the written opinion of this Court filed the day, the Court affirms the judgment of the District Court.

/s/ Patricia S. Connor

CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED: July 8, 2002

NO. 02-1102
CA-95-3115-DKC

MYRA R. EDWARDS
Plaintiff - Appellant
v.

UNITED STATES DEPARTMENT OF THE AIR FORCE
Defendant - Appellees

NO. 02-1103
CA-97-1533-DKC
MYRA R. EDWARDS
Plaintiff - Appellant,
v.

DEPARTMENT OF THE AIR FORCE; MALCOLM GROW
UNITED STATES AIR FORCE MEDICAL CENTER

Defendants - Appellees.

NO. 02-1104
CA-98-4190-DKC

MYRA R. EDWARDS
Plaintiff – Appellant
v.

UNITED STATES DEPARTMENT OF THE AIR FORCE;
MALCOLM GROW

UNITED STATES MEDICAL CENTER
Defendant - Appellees

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O R D E R

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The appellant has filed a petition for rehearing. The Court denies the petition for rehearing.

For the Court, By Direction

/s/ Patricia S. Connor

CLERK